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9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AM32**

### Prevailing Rate Systems; Redefinition of the Madison, Wisconsin, and Southwestern Wisconsin Appropriated Fund Federal Wage System Wage Areas

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management is issuing a final rule to redefine the geographic boundaries of the Madison, Wisconsin, and Southwestern Wisconsin appropriated fund Federal Wage System (FWS) wage areas. The final rule redefines Adams and Waushara Counties, WI, from the Southwestern Wisconsin wage area to the Madison wage area. These changes are based on consensus recommendations of the Federal Prevailing Rate Advisory Committee to best match the above counties to a nearby FWS survey area.

**DATES:** This regulation is effective on July 5, 2011.

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

**SUPPLEMENTARY INFORMATION:** On November 18, 2010, the U.S. Office of Personnel Management (OPM) issued a proposed rule (75 FR 70616) to redefine Adams and Waushara Counties, WI, from the Southwestern Wisconsin wage area to the Madison, WI, wage area. These changes are based on consensus recommendations of the Federal Prevailing Rate Advisory Committee to best match the above counties to a nearby FWS survey area. The proposed rule had a 30-day comment period during which OPM received no comments.

**Regulatory Flexibility Act**

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

**List of Subjects in 5 CFR Part 532**

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

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

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

## PART 532—PREVAILING RATE SYSTEMS

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

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

■ 2. Appendix C to subpart B is amended by revising the wage area listings for the Madison, WI, and Southwestern Wisconsin wage areas to read as follows:

**Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas**

* * * * *

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*Madison*

Survey Area

Wisconsin:
Dane

Area of Application. Survey area plus:

Wisconsin:
Adams
Columbia
Dodge
Grant
Green
Green Lake
Iowa
Jefferson
Lafayette
Marquette
Rock
Sauk
Waushara

* * * * *

*Southwestern Wisconsin*

Survey Area

Wisconsin:
Chippewa
Eau Claire
La Crosse
Monroe
Trempealeau

Area of Application. Survey area plus:

Wisconsin:
Barron
Buffalo
Clark
Crawford
Dunn
Florence
Forest
Jackson
Juneau
Langlade
Lincoln
Marathon
Marinette
Menominee
Oconto
Oneida
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Portage
Price
Richland
Rusk
Shawano
Taylor
Vernon
Vilas
Waupaca
Wood

Minnesota:
Fillmore
Houston
Wabasha
Winona

* * * * *

Dated: February 3, 2011.

[FR Doc. 2011–13700 Filed 6–1–11; 8:45 am]

BILLING CODE 6325–39–P

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AM38**

### Prevailing Rate Systems; Abolishment of Cumberland, ME, as a Nonappropriated Fund Federal Wage System Wage Area

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The U.S. Office of Personnel Management is issuing an interim rule

to abolish the Cumberland, Maine, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Cumberland, Kennebec, and Penobscot Counties, ME, to the York, ME, NAF wage area. Aroostook, Hancock, Knox, Sagadahoc, and Washington Counties, ME, will no longer be defined. These changes are necessary because the closure of the Naval Air Station Brunswick will leave the Cumberland wage area without an activity having the capability to conduct a local wage survey.

**DATES:** *Effective date:* This regulation is effective on June 2, 2011. We must receive comments on or before July 5, 2011. *Applicability date:* FWS employees remaining in the Cumberland wage area will be transferred to the York wage area schedule on the first day of the first applicable pay period beginning on or after July 25, 2011.

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

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

**SUPPLEMENTARY INFORMATION:** The Cumberland, Maine, nonappropriated fund (NAF) Federal Wage System (FWS) wage area is presently composed of one survey county, Cumberland County, ME, and seven area of application counties, Aroostook, Hancock, Kennebec, Knox, Penobscot, Sagadahoc, and Washington Counties, ME. Under section 532.219 of title 5, Code of Federal Regulations, the U.S. Office of Personnel Management (OPM) may establish an NAF wage area when there are a minimum of 26 NAF wage employees in the survey area, the local activity has the capability to host annual local wage surveys, and the survey area has at least 1,800 private enterprise employees in establishments within survey specifications. The Department of Defense (DOD) notified OPM that the imminent closure of the Naval Air Station Brunswick will leave the Cumberland NAF wage area without an activity having the capability to conduct a local wage survey. The NAF FWS employment in Cumberland County is currently 10 employees at the Navy Exchange, 17 employees at Morale, Welfare, and Recreation, and 2 employees at the Coast Guard Exchange System. DOD recommended that OPM abolish the Cumberland NAF FWS wage area and redefine Cumberland, Kennebec, and Penobscot Counties, ME, to the York, ME, NAF wage area.

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

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

(ii) Transportation facilities and commuting patterns; and

(iii) Similarities of the counties in:

(A) Overall population;

(B) Private employment in major industry categories; and

(C) Kinds and sizes of private industrial establishments.

In selecting a wage area to which Cumberland, Kennebec, and Penobscot Counties should be redefined, all criteria favor the York NAF wage area. Based on the application of the regulatory criteria, OPM is defining Cumberland, Kennebec, and Penobscot Counties as area of application counties to the York NAF wage area.

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

The York NAF wage area would consist of one survey county, York County, ME, and five area of application counties: Cumberland, Kennebec, and Penobscot Counties, ME; Rockingham County, NH; and Windsor County, VT. FWS employees remaining in the Cumberland wage area will be transferred to the York wage area schedule on the first day of the first applicable pay period beginning on or after July 25, 2011. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and recommended these changes by consensus.

**Waiver of Notice of Proposed Rulemaking and Delay in Effective Date**

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), OPM finds that good cause exists to waive the general notice of proposed rulemaking. Also pursuant to 5 U.S.C. 553(d)(3), OPM finds that good cause exists for making this rule effective in less than 30 days. This notice is being waived and the regulation is being made effective in less than 30 days because the imminent closure of the Naval Air Station Brunswick will leave the Cumberland wage area without an activity having the capability to conduct a local wage survey and the remaining NAF FWS employees in Cumberland, Kennebec, and Penobscot Counties must be transferred to a continuing wage area as soon as possible.

**Regulatory Flexibility Act**

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

**List of Subjects in 5 CFR Part 532**

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

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

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

## PART 532—PREVAILING RATE SYSTEMS

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

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

**Appendix B to Subpart B of Part 532—[Amended]**

■ 2. Appendix B to subpart B is amended by removing, under the State of Maine, "Cumberland."

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

■ 3. Appendix D to subpart B is amended for the State of Maine by removing the wage area listing for Cumberland, Maine, and revising the wage area listing for York, Maine, to read as follows:

* * * * *

**Maine**

*York*

Survey Area

Maine:
York

Area of application. Survey area plus:

Maine:
Cumberland
Kennebec
Penobscot
New Hampshire:
Rockingham
Vermont:
Windsor

* * * * *

[FR Doc. 2011–13701 Filed 6–1–11; 8:45 am]

BILLING CODE 6325–39–P

## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 51

**[Doc. # AMS–FV–08–0023]**

## United States Standards for Grades of Potatoes

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the United States Standards for Grades of Potatoes. These standards are issued under the Agricultural Marketing Act of 1946. The Agricultural Marketing Service (AMS) is amending the similar varietal characteristic requirement to allow mixed colors and/or types of potatoes when designated as a mixed or specialty pack. Additionally, AMS is adding restrictive tolerances for permanent defects in the en route/at destination tolerances, removing the unneeded definition for injury, and clarifying the scoring guide for sprouts. AMS is also adding table numbers to the definitions of "Damage," "Serious Damage," and "External Defects," amending table headings, replacing omitted language in the definition for bruises and amending language in the tolerance section to ensure soft rot tolerances are applied correctly. The purpose of this revision is to update and revise the standards to more accurately represent today's marketing practices and to clarify existing language.

**DATES:** Effective June 3, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carl Newell, Standardization and Training Section, Fresh Products Branch, (540) 361–1120. The United States Standards for Grades of Potatoes are available through the Fresh Products Branch Web site at *http://www.ams.usda.gov/freshinspection.*

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

### Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) and in the Paperwork Reduction Act (PRA), AMS has considered the economic impact of the amended actions on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this final regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of these actions on small businesses.

This rule revises the U.S. Standards for Grades of Potatoes that were issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627). Standards issued under the 1946 Act are voluntary.

Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Using annual data from the National Agricultural Statistics Service (NASS), the average potato crop value for 2006–2008 was $3.482 billion. Dividing that figure by 15,014 farms yields an average potato crop value per farm of just under $232,000. Since this is well under the SBA threshold of annual receipts of $750,000, it can be concluded that the majority of these producers may be classified as small entities. Furthermore, there are approximately 180 handlers of potatoes and approximately 168 importers of potatoes that may be classified as small entities and may be affected by this rule.

Additional evidence comes from closely examining the Agricultural Census acreage breakdown. Out of a total of 15,014 potato farms in 2007, 19 percent were less than 10 acres and 66 percent were less than 100 acres. An estimate of the number of acres that it would take to produce a crop valued at $750,000 can be made by dividing the 2006–08 average crop value of $3.482 billion by the three-year average bearing acres of 1.097 million, yielding an average potato revenue per acre estimate of $3,174. Dividing $750,000 by $3,174 shows that farms with 236 acres received at least the average price in 2006–08 producing crops valued at $750,000 or more, and would therefore be considered large potato farms under the SBA definition. Looking at farm numbers for additional census size categories shows that 11,718 potato farms (78 percent) are under 220 acres and 11,994 (80 percent) are less than 260 acres. Since a farm with 236 acres of potatoes falls within this range, it can be concluded that the proportion of small potato farms under the SBA definition is between 78 and 80 percent of all U.S. potato farms. The effects of this rule are not expected to be disproportionately greater or smaller for small handlers, producers, or importers than for larger entities.

This rule will amend the similar varietal characteristic requirement, add restrictive tolerances for permanent defects in the enroute/at destination tolerances, remove the definition for injury, and clarify the scoring guides for sprouts. Additionally, this rule will add table numbers to the definitions of "Damage," "Serious Damage," and "External Defects," amend table headings, replace omitted language in the definition for bruises, and amend the tolerance section to ensure soft rot tolerances are applied correctly. These actions will make the standard more consistent and uniform with marketing trends and practices. These actions will not impose any additional reporting or recordkeeping requirements on either small or large potato producers, handlers, or importers.

USDA has not identified any Federal rules that duplicate, overlap, or conflict with this rule. However, there are marketing programs which regulate the handling of potatoes under 7 CFR parts 945–948 and 953. Potatoes under a marketing order have to meet certain requirements set forth in the grade standards. In addition, potatoes are subject to section 8e import requirements under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674) which requires imported potatoes to meet grade, size, and quality under the applicable marketing order (7 CFR part 980).

Alternatives to this rule were considered including the option of not issuing the rule. However, the need for revision has increased as a result of changing market characteristics, and this final rule represents input from the potato industry.

A proposed rule regarding these revisions to the United States Standards for Grades of Potatoes was published in the **Federal Register** on April 30, 2010 [75 FR 22707]. A comment period of thirty days was issued which closed June 1, 2010.

**Comments**

In response to the request for comments, AMS received comments from nine respondents. Six comments were from national or state trade associations representing potato growers, shippers, and receivers, of which two supported the proposal and four partially supported the proposal. One supporting comment was from a nationwide produce retail chain. Another supporting comment was from a foreign government agency representing its agricultural inspection service. One comment came from a non-supporting consumer, who opposed the proposal in general without providing any specific information. Additionally, one national trade association proposed an additional revision.

AMS proposed to amend the similar varietal characteristic requirement to allow mixed colors and/or types of potatoes when designated as a mixed or specialty pack. Supporting comments were received from five national or state trade associations representing potato growers, shippers, and receivers, one nationwide produce retail chain, and one foreign government agency. One supportive commenter stated that there should only be a U.S. No. 1 mixed or specialty pack as allowing a U.S. No. 2 mixed or specialty pack downgrades the pack. The same commenter also suggested only allowing mixed colors and not mixed types of potatoes. AMS believes that allowing for both U.S. No. 1 and No. 2 mixed grade potatoes and to be mixed colors and/or types of potatoes allows for the appropriate amount of flexibility within the industry to meet current demand of consumers. Therefore, no changes were made to the standards based on these suggestions.

One objection came from a state trade association that believes consumers will prepare potatoes from the same container using one cooking step. This respondent does not find it acceptable for packers and repackers of Idaho potatoes to allow mixed types that perform differently, when cooked, to be packed in one bag. However, there were seven supporting commenters that believed that allowing mixed colors and/or types of potatoes when designated as a mixed or specialty pack will bring the standards in sync with current marketing practices and consumer demands in the United States and Canada. AMS agrees with these seven commenters. Therefore, AMS is revising the similar varietal characteristic requirement as proposed.

AMS also proposed to add restrictive tolerances for permanent defects in the en route/at destination tolerances. Two national trade associations representing potato growers and receivers and one nationwide produce retail chain supported the proposal. Four national and state trade associations representing potato growers and shippers opposed this revision. The opposing commenters believe that the new language will add confusion to the standards by causing market inspectors to misinterpret the difference between condition and permanent defects. Also, since permanent defects do not change over time, these commenters believe the restrictive tolerances are unnecessary.

On March 21, 2008, a final rule was published in the **Federal Register** (73 FR 15052) that added "en route" or "at destination" tolerances to the U.S. No. 1 and No. 2 grades. Prior to that rulemaking, there were only shipping point tolerances: For U.S. No. 1 a total of 8 percent, and for U.S. No. 2 a total of 10 percent. En route/at destination tolerances added for U.S. No. 1 potatoes allowed a total of 10 percent permanent defects, and for U.S. No. 2 potatoes a total of 12 percent permanent defects. AMS did not add restrictive tolerances to the en route/at destination tolerances in the 2008 final rule. Therefore 2 percent more permanent defects were allowed for both U.S. No. 1 and No. 2 between shipping point and at destination. This rulemaking adds a restrictive tolerance of not more than 8 percent for permanent defects in the U.S. No. 1 tolerances and not more than 10 percent for permanent tolerances in U.S. No. 2 that will ensure that shipping point and en route/at destination tolerances are properly the same.

In addition, AMS proposed to clarify the scoring guide for sprouts. Two national trade associations representing growers and receivers, one nationwide produce retail chain, and one foreign government agency were in favor of, but four national or state trade associations expressed concern regarding the phrase "or have numerous individual and/or clusters of sprouts which materially detract from the appearance of the potato." Those commenters opposed to the change stated that the wording is too subjective and may nullify the length requirements for shipping point and destination. Currently, the wording in the standards can be interpreted to allow any cluster, no matter how small, to not only be scored as damage but also as serious damage. To ensure clarity, AMS proposed that clusters must be numerous and must materially or seriously detract from the appearance before being scored. Further, numerous individual sprouts that do not exceed the length requirements were also included. AMS believes that even though a potato may have sprouts, either individuals and/or clusters, not exceeding the length requirements, the appearance can be materially or seriously affected due to the sprouts being so numerous. Additionally, scoring numerous individual and/or clusters of sprouts based on materially or seriously detracting from the appearance does not nullify the length requirements for single individual sprouts or clusters. Therefore, AMS is revising the scoring guideline for sprouts as proposed.

Finally, one commenter pointed out that although AMS proposed to replace the omission of "or 6 oz." in the definition of bruises in Table III—External Defects, it appears to be already included in this definition within the Standards. Upon further analysis, AMS determined that "or 6 oz." was never omitted, and therefore does not need to be added back into the standards. However, the language "2½ inch or" in the bruises definition was in fact inadvertently omitted as part of a previous rulemaking (73 FR 70585; November 21, 2008) but appear in the Standards. This rulemaking action is intended to rectify this error.

Therefore, AMS will revise the following as proposed: Remove the definition for injury, add table numbers to the definitions of "Damage," "Serious Damage," and "External Defects," amend table headings, replace omission of "2½ inch or" in the definition for bruises, and amend language in the tolerance section to ensure soft rot tolerances are applied correctly.

In addition to the comments on these proposed revisions, one national trade association representing potato receivers suggested that AMS reinstitute the 1 percent soft rot en route/at destination tolerance for the U.S. No. 1 and U.S. No. 2 grades. This proposal is outside the scope of this rulemaking but may be considered at a later time.

**List of Subjects in 7 CFR Part 51**

Agricultural commodities, Food grades and standards, Fruits, Nuts,

Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

## PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

■ 2. In § 51.1541, paragraph (a) is revised to read as follows:

### § 51.1541 U.S. No. 1.

* * * * *

(a) Similar varietal characteristics, except when designated as a mixed or specialty pack;

* * * * *

■ 3. In § 51.1543, paragraph (a) is revised to read as follows:

### § 51.1543 U.S. No. 2.

* * * * *

(a) Similar varietal characteristics, except when designated as a mixed or specialty pack;

* * * * *

■ 4. In § 51.1546, paragraph (a) is revised to read as follows:

### § 51.1546 Tolerances.

* * * * *

(a) *For defects*—(1) *U.S. No. 1.* (i) *At Shipping Point:* A total of 8 percent for potatoes in any lot which fail to meet the requirements for the grade: Provided, That included in this tolerance not more than the following percentages shall be allowed for the defects listed:

(A) 5 percent for external defects;

(B) 5 percent for internal defects; and

(C) Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(ii) *En route or at destination:* A total of 10 percent for potatoes in any lot which fail to meet the requirements for the grade: Provided, That included in this tolerance not more than a total of 8 percent shall be allowed for permanent defects: And provided further, the following percentages shall be allowed for the defects listed:

(A) 7 percent for external defects, including therein not more than 5 percent for permanent external defects;

(B) 7 percent for internal defects, including therein not more than 5 percent for permanent internal defects; and

(C) Not more than a total of 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(2) *U.S. Commercial:* A total of 20 percent for potatoes in any lot which fail to meet the requirements for the grade: Provided, That included in this tolerance not more than the following percentages shall be allowed for the defects listed:

(i) 10 percent for potatoes which fail to meet the requirements for U.S. No. 2 grade, including therein not more than:

(ii) 6 percent for external defects;

(iii) 6 percent for internal defects; and

(iv) Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(3) *U.S. No. 2.* (i) *At Shipping Point:* A total of 10 percent for potatoes in any lot which fail to meet the requirements for the grade: Provided, That included in this tolerance not more than the following percentages shall be allowed for the defects listed:

(A) 6 percent for external defects;

(B) 6 percent for internal defects; and

(C) Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(ii) *En route or at destination:* A total of 12 percent for potatoes in any lot which fail to meet the requirements for the grade: Provided, That included in this tolerance not more than a total of 10 percent shall be allowed for permanent defects: And provided further, the following percentages shall be allowed for the defects listed:

(A) 8 percent for external defects, including therein not more than 6 percent for permanent external defects;

(B) 8 percent for internal defects, including therein not more than 6 percent for permanent internal defects; and

(C) Not more than a total of 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

* * * * *

### § 51.1559 [Removed and Reserved]

■ 5. Section 51.1559 is removed and reserved.

■ 6. Section 51.1560 is revised to read as follows:

### § 51.1560 Damage.

"Damage" means any defect, or any combination of defects, which materially detracts from the edible or marketing quality, or the internal or external appearance of the potato, or any external defect which cannot be removed without a loss of more than 5 percent of the total weight of the potato. See Tables III, IV, V and VI in § 51.1564 and Table VII in § 51.1565.

■ 7. Section 51.1561 is revised to read as follows:

### § 51.1561 Serious damage.

"Serious damage" means any defect, or any combination of defects, which seriously detracts from the edible or marketing quality, or the internal or external appearance of the potato, or any external defect which cannot be removed without a loss of more than 10 percent of the total weight of the potato. See Tables III, IV, V and VI in § 51.1564 and Table VII in 5§ 1.1565.

■ 8. Section 51.1564 is amended by:

■ A. Amending the introductory text by removing the reference "Table III", and by adding the reference "Tables III, IV, V and VI", in its place.

■ B. Amending Table III by revising the column headings; and

■ C. Amending Table III by revising the entries for "Bruises (Not including pressure bruise and sunken discolored areas)" and "Sprouts".

The revisions read as follows:

### § 51.1564 External defects.

* * * * *

TABLE III—EXTERNAL DEFECTS

| Defects | Damage | Serious damage[1] |
|---|---|---|
| * | * | * |
| Bruises (Not including pressure bruise and sunken discolored areas). | When removal causes a loss of more than 5 percent of the total weight of the potato or when the area affected is more than 5 percent of the surface in the aggregate (i.e., ¾ inch on a 2½ inch or 6 oz. potato). Correspondingly lesser or greater areas in smaller or larger potatoes. | When removal causes a loss of more than 10 percent of the total weight of the potato or when the area affected is more than 10 percent of the surface in the aggregate (i.e., 1¼ inches on a 2½ inch or 6 oz. potato). Correspondingly lesser or greater areas in smaller or larger potatoes. |

TABLE III—EXTERNAL DEFECTS—Continued

| Defects | Damage | Serious damage[1] |
|---|---|---|
| * | * * * | * * * |
| Sprouts | When more than 5 percent of the potatoes in any lot have any sprout more than ¼ inch in length at shipping point; more than ½ inch in length at destination; or have numerous individual and/or clusters of sprouts which materially detract from the appearance of the potato. | When more than 10 percent of the potatoes in any lot have any sprout more than ½ inch in length at shipping point; more than 1 inch in length at destination; or have numerous individual and/or clusters of sprouts which seriously detract from the appearance of the potato. Serious damage by sprouts shall only be scored against the U.S. Commercial and U.S. No. 2 grades. |
| * | * * * | * * * |

[1] The following defects are considered serious damage when present in any degree: 1. Freezing. 2. Late blight. 3. Ring rot. 4. Southern bacterial wilt. 5. Soft rot. 6. Wet breakdown.

**§ 51.1565 [Amended]**

■ 9. Section 51.1565 is amended by:

■ A. Amending the introductory text by removing the reference "Table IV", and by adding the reference "Table VII", in its place; and

■ B. Amending Table VII by removing the column heading "Damage maximum allowed" and adding the column heading "Damage Maximum Allowed" in its place, and by removing the column heading "Serious damage maximum allowed", and by adding the column heading "Serious Damage Maximum Allowed" in its place.

Dated: May 24, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–13485 Filed 6–1–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 201

**[Doc. No. AMS–LS–08–0002]**

**RIN 0581–AC74**

## Federal Seed Act Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** AMS is revising the Federal Seed Act (FSA) regulations. The rule amends the list of prohibited noxious-weed seeds to reflect the recent addition of four species, deletion of two species, and changes in the nomenclature of four species listed in the Federal Noxious Weed Act (FNWA). The rule updates the seed labeling regulations, noxious-weed seed tolerances, seed testing regulations, and seed certification regulations. The rule also revises the nomenclature of kinds regulated under the FSA and corrects several minor errors. The list of noxious-weed seeds is amended to help prevent the spread of these highly destructive weeds. The labeling regulations and noxious-weed seed tolerances are amended to prevent potential conflicts with State regulations, reflect currently used terms, and reflect current industry practices. The seed testing and seed certification regulations are amended to incorporate the latest in seed testing and seed certification knowledge and to prevent potential conflicts with State regulations.

**DATES:** Effective July 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina 28054–2193; telephone (704) 810–8884; fax (704) 852–4109; e-mail *richard.payne@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

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

### Executive Order 12988

The final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to judicial challenge to the provision of this rule.

### Regulatory Flexibility Act and Paperwork Reduction Act

AMS has certified that this action will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). Many small entities ship seed in interstate commerce. There are about 3,095 interstate shippers. Small agricultural service firms, which include interstate shippers, are defined by the Small Business Administration as those whose annual receipts are less than $7,000,000 (13 CFR 121.201). We estimate that about 90 percent of the interstate shippers are small entities.

Shippers, including small entities, usually test and subsequently package and label seed to comply with both the FSA and State seed laws. This is possible because the testing requirements of the State laws are similar or the same as those of the FSA. Therefore, a single test provides information necessary to comply with both State seed laws and the FSA. Changing the seed testing and seed certification regulations will reconcile State and Federal seed testing and seed certification procedures. Moreover, using similar or the same testing procedures will reduce the burden on small entities shipping seed in interstate commerce because a test used for interstate commerce could also be used in intrastate commerce.

Adding four species to the list of seeds that are noxious in seed shipped in interstate commerce will not significantly impact small entities by adding additional costs for seed testing, because all seed must currently be examined for 93 noxious-weed seeds listed in the FSA regulations and those listed in the State laws to be compliant with the FSA. (The FSA requires that seed shipped in interstate commerce comply with the noxious-weed seed requirements of that State into which the seed is shipped.) Therefore, any examination for the weed seeds being added will be in conjunction with examinations that already occur for State noxious-weed seeds. Updating the noxious-weed seed tolerances to be uniform with those required by State

laws will make FSA and State regulatory action uniform and will not increase the burden on small entities shipping seed in interstate commerce.

Removing the exemption in the FSA regulations for labeling freshly harvested Kentucky bluegrass seed and sugar beet seed shipped in interstate commerce during July, August, and September for germination will not add additional costs for seed testing because this testing and subsequent labeling is required by State seed laws and regulations. Also, much of the seed handled by small entities is already tested by their suppliers. There will be no effect on the competitive position of small entities in relation to larger entities since both will have to comply with the same regulations.

This rule will not impose any additional reporting or recordkeeping requirements. Such requirements are currently approved by OMB under Control No. 0581–0026.

**Executive Order 13132**

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. USDA has determined that this rule conforms to the Federalism principles set forth in the Executive Order, and that this rule does not have Federalism implications.

**Background**

The FSA, Title II (7 U.S.C. 1571–1575) regulates agricultural and vegetable planting seeds in interstate commerce. Agricultural and vegetable seeds shipped in interstate commerce must be labeled with certain quality information. The labeling information and any advertisements pertaining to the seed must be truthful.

**Comments**

A notice of proposed rulemaking was published in the **Federal Register** (75 FR 78932) on December 17, 2010. Interested parties were invited to submit written comments until February 15, 2011. USDA received no comments. A hearing on the proposed rule was held in Gastonia, NC, on January 21, 2011, to discuss the revisions. No one attended the hearing.

**Terms Defined**

AMS proposed to revise and update the nomenclature of many of the kinds of agricultural and vegetable seeds listed in §§ 201.2(h) and 201.2(i) to conform to current usage on the International Code of Botanical Nomenclature. AMS also proposed to add "bunching onion" and "radicchio" as acceptable synonyms for "Welch onion" and "chicory," respectively, in § 201.2(i). "Bunching onion" and "radicchio" are commonly used and accepted kind names by companies selling and labeling seed. USDA received no comments. The changes to these sections, as published in the proposed rule, are incorporated in the final rule.

**Noxious-Weed Seeds**

Under the Federal Noxious Weed Act (FNWA) of 1974 (7 U.S.C. 2801–2814) the Secretary has identified certain noxious weeds that are prohibited movement into or through the United States. AMS proposed to amend § 201.16(b) of the FSA regulations to designate seeds of four additional species of noxious weeds listed under the FNWA as noxious in agricultural and vegetable seed shipped in interstate commerce under the FSA. In addition, AMS proposed to amend the FSA regulations to remove two species no longer cited in the FNWA and revise the nomenclature of four species to be consistent with the nomenclature in the FNWA. The USDA, Animal and Plant Health Inspection Service (APHIS) enforces both the FNWA and Title III, the Foreign Commerce provisions of the FSA. However, the FNWA does not apply to seeds for planting which are subject to the FSA and does not apply to any noxious weed seeds that may contaminate seed subject to the provisions of the FSA. Thus, AMS cannot currently take regulatory action when seeds of the four species classified as noxious under the FNWA are found in planting seed. Therefore, by recognizing them as noxious weeds under the FSA, AMS will act in an orderly way to prevent their spread on those rare occasions that they are found in planting seeds. Noxious weeds that are not listed under the FSA may still be restricted under the FSA in some cases. Each State has a list of weed seeds that are noxious in planting seed. Weed seeds that are designated noxious by each State are also noxious under the FSA when present in seed shipped into that State. USDA received no comments. The changes to these sections, as published in the proposed rule, are incorporated in the final rule.

**Seed Testing**

AMS proposed to update the FSA seed testing regulations to include testing to reflect improvements in seed testing technology and the current standards of usage within the industry as outlined below. The Association of Official Seed Analysts (AOSA) has already adopted these changes in their "Rules for Testing Seed," the testing rules used by most State and commercial seed analysts. Including these changes in the FSA regulations will eliminate potential conflicts between the testing rules used in interstate commerce and those used by the States. This will eliminate the need to do separate tests to ensure that seed labeling complies with both Federal and State laws. It will also facilitate seed trade and reduce cost to the seed industry and to seed buyers.

AMS proposed that §§ 201.48(g) and 201.51(b) specify a change in the FSA regulations for determining pure seed and inert matter for 18 grass seed kinds. The change will require pure seed of these 18 kinds to have a caryopsis at least one-third the length of the palea. The change will also require seeds of these 18 grass kinds to be classified as inert matter if the caryopsis development is less than one-third the length of the palea. Currently, all seeds of these 18 grass kinds are considered pure seed if the caryopsis has some degree of endosperm development. USDA received no comments. The changes to these sections, as published in the proposed rule, are incorporated in the final rule.

**Noxious-Weed Seed Tolerances**

AMS proposed to update the FSA seed testing regulations to reflect improvements in the noxious-weed seed tolerances using modern statistical applications. The AOSA has already adopted these changes in their "Rules for Testing Seed," the rules used by most State and commercial seed analysts. Including these changes will eliminate potential conflicts between FSA and State regulatory action. USDA received no comments. The changes to this section, as published in the proposed rule, are incorporated in the final rule.

**Seed Certification**

AMS proposed to update the certified seed regulations. Sections 201.74 and 201.75 will be amended to permit the option of printing the lot number, kind, and variety name (if certified to variety) on the seed container in a position to be viewed in conjunction with the official certification label. A sentence in §§ 201.74 and 201.75, pertaining to small containers of seed, will be deleted because these containers are covered in the amendment. The Association of Official Seed Certifying Agencies (AOSCA), the organization that develops rules for use by its members to certify seed for varietal purity, has already amended its rules to allow the option of printing certain required labeling information on seed containers outside the confines of the certification

label. This will reflect that change in the AOSCA rules and current industry practices. In addition, this option will allow seed companies to realize a financial savings by purchasing seed bags with preprinted certification labels in large quantities and add the required information pertinent to each seed lot. USDA received no comments. The changes to these sections, as published in the proposed rule, are incorporated in the final rule.

**Seed Labeling**

AMS proposed to add the term "(Environmental Protection Agency Toxicity Category I)" after references to "mercurials and similarly toxic substances" in § 201.31a(c)(1), 201.31a(c)(2), and 201.31a(d).

The current FSA regulations refer to the most toxic class of chemical seed treatments as "mercurials and similarly toxic substances." However, mercury-based compounds are no longer used by the seed industry for treating seeds. Further, the current classification by the Environmental Protection Agency (EPA) of the most toxic chemical compounds used as seed treatments is "Toxicity Category I." Chemicals of this toxicity, sold in bulk for treating seed, are required by EPA to be labeled as Toxicity Category I compounds. Therefore, adding the term "(Environmental Protection Agency Toxicity Category I)" to the FSA regulations will clarify the labeling requirements for seed treated with the most toxic class of chemical compounds used by the seed industry, reduce the possibility of mislabeling chemically treated seed shipped in interstate commerce, and provide consistency with classification terms used by EPA.

AMS proposed to update § 201.20 by removing the exemption from labeling freshly harvested Kentucky bluegrass and sugar beet seed sold in July, August, and September for germination. Germination labeling is required for all other kinds of seeds regulated by the FSA. This exemption is no longer needed because current industry practice is to label all kinds of seed for germination prior to shipment and sale. Since State seed laws require labeling of all seed for germination, removing this exemption will eliminate conflict between the FSA regulations and State seed labeling requirements. USDA received no comments. The changes to these sections, as published in the proposed rule, are incorporated in the final rule.

**List of Subjects in 7 CFR Part 201**

Certified seed, Definitions, Inspections, Labeling, Purity analysis, Sampling.

For reasons set forth in the preamble, 7 CFR part 201 is amended as follows:

## PART 201—FEDERAL SEED ACT REGULATIONS

■ 1. The authority citation for part 201 continues to read as follows:

**Authority:** 7 U.S.C. 1592.

### § 201.2 [Amended]

■ 2. Section 201.2 is amended by:

■ A. Removing the words "§§ 201.1 through 201.159" and adding in their place the words "this part" in the introductory text.

■ B. Removing the word "act" and adding in its place the word "Act", and by removing the words "§§ 201.1 through 201.159" and adding in their place the words "this part" in paragraph (f).

■ C. In paragraph (h):

■ i. Removing the terms "Agrotricum—× *Agrotriticum* Ciferri and Giacom.", "Alfalfa—*Medicago sativa* L.", "Alfilaria—*Erodium cicutarium* (L.) L'Her.", "Bahiagrass—*Paspalum notatum* Fluegge", "Barley—*Hordeum vulgare* L.", "Bean, adzuki—*Vigna angularis* (Willd.) Ohwi and Ohashi", "Bean, field—*Phaseolus vulgaris* L.", "Bean, mung—*Vigna radiata* (L.) Wilczek", "Bentgrass, creeping—*Agrostis stolonifera* L. var. *palustris* (Huds) Farw.", "Bermudagrass, giant—*Cynodon dactylon* (L.) Pers. var. *Aridus* Harlan and de Wet", "Bluegrass, Nevada—*Poa secunda* J.S. Presl", "Bluestem, big—*Andropogon gerardii* Vitm. var. *gerardii*", "Bluestem, yellow—*Bothriochloa ischaemum* (L.) Keng", "Brome, meadow—*Bromus biebersteinii* Roem. and Schult.", "Brome, smooth—*Bromus inermis* Leyss.", "Corn, field—*Zea mays* L.", "Corn, pop—*Zea mays* L.", "Crambe—*Crambe abyssinica* R.E. Fries", "Crotalaria, slenderleaf—*Crotalaria brevidens* Benth. var. *intermedia* (Kotschy) Polh.", "Crotalaria, striped or smooth—*Crotalaria pallida* Ait.", "Crownvetch—*Coronilla varia* L.", "Dichondra—*Dichondra repens* Forst. and Forst. f.", "Emmer—*Triticum dicoccon* Schrank", "Fescue, chewings—*Festuca rubra* L. subsp. *commutata* Gaud.", "Fescue, hair—*Festuca tenuifolia* Sibth.", "Fescue, hard—*Festuca brevipila* Tracey", "Fescue, sheep—*Festuca ovina* L. var. *ovina*", "Grama, blue—*Bouteloua gracilis* (Kunth) Steud.", "Hardinggrass—*Phalaris stenoptera* Hack.", "Hemp—*Cannabis sativa* L.", "Kudzu—*Pueraria montana* (Lour.) Merr. var. *lobata* (Willd.) Maesen and S. Almeida", "Lentil—*Lens culinaris* Medik.", "Lespedeza, sericea or Chinese—*Lespedeza cuneata* (Dum.-Cours.) G. Don", "Lespedeza, striate—*Kummerowia striata* (Thunb.) Schindler", "Lovegrass, sand—*Eragrostis trichodes* (Nutt.) Wood", "Millet, foxtail—*Setaria italica* (L.) P. Beauv.", "Millet, Japanese—*Echinochloa frumentacea* Link", "Millet, proso—*Panicum miliaceum* L.", "Molassesgrass—*Melinis minutiflora* Beauv.", "Mustard, black—*Brassica nigra* (L.) Koch", "Mustard, India—*Brassica juncea* (L.) Czernj. and Coss.", "Mustard, white—*Sinapis alba* L.", "Oat—*Avena byzantina* C. Koch, *A. sativa* L., *A. nuda* L.", "Oatgrass, tall—*Arrhenatherum elatius* (L.) J.S. Presl and K.B. Presl", "Panicgrass, green—*Panicum maxicum* Jacq. var. *trichoglume* Robyns", "Pea, field—*Pisum sativum* L." "Rape, annual—*Brassica napus* L. var. *annua* Koch", "Rape, bird—*Brassica rapa* L. subsp. *rapa*", "Rape, turnip—*Brassica rapa* L. subsp. *silvestris* (Lam.) Janchen", "Rape, winter—*Brassica napus* L. var. *biennis* (Schubl. and Mart.) Reichb.", "Rescuegrass—*Bromus catharticus* Vahl", "Ricegrass, Indian—*Oryzopsis hymenoides* (Roem. and Schult.) Ricker", "Rye—*Secale cereale* L.", "Rye, mountain—*Secale strictum* (K.B. Presl) K.B. Presl subsp. *strictum*", "Ryegrass, Wimmera—*Lolium rigidum* Gaud.", "Sorghum-sudangrass—*Sorghum* × *drummondii* (Steud.) Millsp. and Chase", "Spelt—*Triticum spelta* L.", "Sudangrass—*Sorghum* × *drummondii* (Steud.) Millsp. and Chase", "Timothy, turf—*Phleum bertolonii* DC.", "Trefoil, big—*Lotus uliginosus* Schk.", "Triticale—× *Triticosecale* Wittm. (*Secale* × *Triticum*)", "Veldtgrass—*Ehrharta calycina* J.E. Smith", "Wheat, common—*Triticum aestivum* L.", "Wheat, club—*Triticum compactum* Host", "Wheat, durum—*Triticum durum* Desf.", "Wheat, Polish—*Triticum polonicum* L.", "Wheat, poulard—*Triticum turgidum* L.", "Wheatgrass, beardless—*Pseudoroegneria spicata* (Pursh) A. Love", "Wheatgrass, intermediate—*Elytrigia intermedia* (Host) Nevski subsp. *intermedia*", "Wheatgrass, pubescent—*Elytrigia intermedia* (Host) Nevski subsp. *intermedia*", "Wheatgrass, Siberian—*Agropyron fragile* (Roth) Candargy subsp. *sibiricum* (Willd.) Meld.", "Wheatgrass, slender—*Elymus trachycaulus* (Link) Shinn.", "Wheatgrass, streambank—*Elymus lanceolatus* (Scribn. and J.G. Smith) Gould subsp. *lanceolatus*.",

"Wheatgrass, tall—*Elytrigia elongata* (Host) Nevski", "Wheatgrass, western—*Pascopyrum smithii* (Rydb.) A. Love", and "Wildrye, basin—*Leymus cinereus* (Scribn. & Merr.) A. Love".

■ ii. Adding the terms "Agrotricum—× *Agrotriticum* Cif. & Giacom.", "Alfalfa—*Medicago sativa* L. subsp. *sativa*", "Alfilaria—*Erodium cicutarium* (L.) L'Hér.", "Bahiagrass—*Paspalum notatum* Flüggé", "Barley—*Hordeum vulgare* L. subsp. *vulgare*", "Bean, adzuki—*Vigna angularis* (Willd.) Ohwi & H. Ohashi var. *angularis*", "Bean, field—*Phaseolus vulgaris* L. var. *vulgaris*", "Bean, mung—*Vigna radiata* (L.) R. Wilczek var. *radiata*", "Bentgrass, creeping—*Agrostis stolonifera* L.", "Bermudagrass, giant—*Cynodon dactylon* (L.) Pers. var. *aridus* J.R. Harlan & de Wet", "Bluegrass, Nevada—*Poa secunda* J. Presl", "Bluestem, big—*Andropogon gerardii* Vitman", "Bluestem, yellow—*Bothriochloa ischaemum* (L.) Keng var. *ischaemum*", "Brome, meadow—*Bromus biebersteinii* Roem. & Schult.", "Brome, smooth—*Bromus inermis* Leyss. subsp. *inermis*", "Corn, field—*Zea mays* L. subsp. *mays*", "Corn, pop—*Zea mays* L. subsp. *mays*", "Crambe—*Crambe abyssinica* R.E. Fr.", "Crotalaria, slenderleaf—*Crotalaria brevidens* Benth. var. *intermedia* (Kotschy) Polhill", "Crotalaria, striped or smooth—*Crotalaria pallida* Aiton", "Crownvetch—*Securigera varia* (L.) Lassen", "Dichondra—*Dichondra repens* J.R. Forst. & G. Forst.", "Emmer—*Triticum turgidum* L. subsp. *dicoccon* (Schrank) Thell.", "Fescue, Chewing's—*Festuca rubra* L. subsp. *commutata* Gaudin", "Fescue, hair—*Festuca filiformis* Pourr.", "Fescue, hard—*Festuca trachyphylla* (Hack.) Krajina", "Fescue, sheep—*Festuca ovina* L.", "Grama, blue—*Bouteloua gracilis* (Kunth) Griffiths", "Hardinggrass—*Phalaris aquatica* L.", "Hemp—*Cannabis sativa* L. subsp. *sativa*", "Kudzu—*Pueraria montana* (Lour.) Merr. var. *lobata* (Willd.) Sanjappa & Predeep", "Lentil—*Lens culinaris* Medik. subsp. *culinaris*", "Lespedeza, sericea or Chinese—*Lespedeza cuneata* (Dum. Cours.) G. Don", "Lespedeza, striate—*Kummerowia striata* (Thunb.) Schindl.", "Lovegrass, sand—*Eragrostis trichodes* (Nutt.) Alph. Wood", "Millet, foxtail—*Setaria italica* (L.) P. Beauv. subsp. *italica*" "Millet, Japanese—*Echinochloa esculenta* (A. Braun) H. Scholz", "Millet, proso—*Panicum miliaceum* L. subsp. *miliaceum*", "Molassesgrass—*Melinis minutiflora* P. Beauv.", "Mustard, black—*Brassica nigra* (L.) W.D.J. Koch", "Mustard, India—*Brassica juncea* (L.) Czern. var. *juncea*", "Mustard, white—*Sinapis alba* L. subsp. *alba*", "Oat—*Avena byzantina* K. Koch, *A. sativa* L., *A. nuda* L.", "Oatgrass, tall—*Arrhenatherum elatius* (L.) J. Presl & C. Presl subsp. *elatius*", "Panicgrass, green—*Panicum maximum* Jacq.", "Pea, field—*Pisum sativum* L. var. *arvense* (L.) Poir.", "Rape, annual—*Brassica napus* L. var. *napus*", "Rape, bird—*Brassica rapa* L. subsp. *campestris* (L.) A.R. Clapham", "Rape, turnip—*Brassica rapa* L. subsp. *campestris* (L.) A.R. Clapham and subsp. *oleifera* (DC.) Metzg.", "Rape, winter—*Brassica napus* L. var. *napus*", "Rescuegrass—*Bromus catharticus* Vahl var. *catharticus*", "Ricegrass, Indian—*Achnatherum hymenoides* (Roem. & Schult.) Barkworth", "Rye—*Secale cereale* L. subsp. *cereale*", "Rye, mountain—*Secale strictum* (C. Presl) C. Presl subsp. *strictum*", "Ryegrass, Wimmera—*Lolium rigidum* Gaudin", "Sorghum-sudangrass—*Sorghum* × *drummondii* (Steud.) Millsp. & Chase", "Spelt—*Triticum aestivum* L. subsp. *spelta* (L.) Thell.", "Sudangrass—*Sorghum* × *drummondii* (Steud.) Millsp. & Chase", "Timothy, turf—*Phleum nodosum* L.", "Trefoil, big—*Lotus uliginosus* Schkuhr", "Triticale—× *Triticosecale* A. Camus (*Secale* × *Triticum*)", "Veldtgrass—*Ehrharta calycina* Sm.", "Wheat, common—*Triticum aestivum* L. subsp. *aestivum*", "Wheat, club—*Triticum aestivum* L. subsp. *compactum* (Host) Mackey", "Wheat, durum—*Triticum turgidum* L. subsp. *durum* (Desf.) Husn.", "Wheat, Polish—*Triticum turgidum* L. subsp. *polonicum* (L.) Thell.", "Wheat, poulard—*Triticum turgidum* L. subsp. *turgidum*", "Wheatgrass, beardless—*Pseudoroegneria spicata* (Pursh) Á. Löve", "Wheatgrass, intermediate—*Thinopyrum intermedium* (Host) Barkworth & D.R. Dewey subsp. *intermedium*", "Wheatgrass, pubescent—*Thinopyrum intermedium* (Host) Barkworth & D.R. Dewey subsp. *barbulatum* (Schur) Barkworth & D.R. Dewey", "Wheatgrass, Siberian—*Agropyron fragile* (Roth) P. Candargy", "Wheatgrass, slender—*Elymus trachycaulus* (Link) Shinners subsp. *trachycaulus*", "Wheatgrass, streambank—*Elymus lanceolatus* (Scribn. & J.G. Sm.) Gould subsp. *riparius* (Scribn. & J.G. Sm.) Barkworth", "Wheatgrass, tall—*Thinopyrum elongatum* (Host) D.R. Dewey", "Wheatgrass, western—*Pascopyrum smithii* (Rydb.) Barkworth & D.R. Dewey", and "Wildrye, basin—*Leymus cinereus* (Scribn. & Merr.) Á. Löve".

■ D. In paragraph (i):

■ i. Removing the terms "Artichoke—*Cynara cardunculus* L. subsp. *cardunculus*", "Asparagus—*Asparagus officinalis* Baker", "Bean, garden—*Phaseolus vulgaris* L.", "Bean, lima—*Phaseolus lunatus* L.", "Broadbean—*Vicia faba* L.", "Broccoli—*Brassica oleracea* L. var. *botrytis* L.", "Brussels sprouts—*Brassica oleracea* L. var. *gemmifera* DC.", "Cardoon—*Cynara cardunculus* L. subsp. *cardunculus*", "Celeriac—*Apium graveolens* L. var. *rapaceum* (Mill.) Gaud.", "Chard, Swiss—*Beta vulgaris* L. subsp. *cicla* (L.) Koch", "Citron—*Citrullus lanatus* (Thunb.) Matsum. and Nakai var. *citroides* (Bailey) Mansf.", "Collards—*Brassica oleracea* L. var. *acephala* DC.", "Corn, sweet—*Zea mays* L.", "Cornsalad—*Valerianella locusta* (L.) Laterrade", Cress, water—*Rorippa nasturtium-aquaticum* (L.) Hayek", Dandelion—*Taraxacum officinale* Wigg.", "Endive—*Cichorium endivia* L.", "Gherkin, West India—*Cucumis anguria* L.", "Kale—*Brassica oleracea* L. var. *acephala* DC.", "Kale, Chinese—*Brassica oleracea* L. var. *alboglabra* (Bailey) Musil", "Kale, Siberian—*Brassica napus* L. var. *pabularia* (DC.) Reichb.", "Melon—*Cucumis melo* L.", "Mustard, India—*Brassica juncea* (L.) Czernj. and Coss.", "Mustard, spinach—*Brassica perviridis* (Bailey) Bailey", "Onion—*Allium cepa* L.", "Parsnip—*Pastinaca sativa* L.", "Pea—*Pisum sativum* L.", "Pumpkin—*Cucurbita pepo* L., *C. moschata* (Duchesne) Poiret, and *C. maxima* Duchesne", "Rhubarb—*Rheum rhabarbarum* L.", "Rutabaga—*Brassica napus* L. var. *napobrassica* (L.) Reichb.", "Spinach, New Zealand—*Tetragonia tetragonoides* (Pall.) Ktze.", "Squash—*Cucurbita pepo* L., *C. moschata* (Duchesne) Poiret, and *C. maxima* Duchesne", and "Watermelon—*Citrullus lanatus* (Thunb.) Matsum. and Nakai var. *lanatus*".

■ ii. Adding the terms "Artichoke—*Cynara cardunculus* L.", "Asparagus—*Asparagus officinalis* L.", "Bean, garden—*Phaseolus vulgaris* L. var. *vulgaris*", "Bean, Lima—*Phaseolus lunatus* L.", "Broadbean—*Vicia faba* L. var. *faba*", "Broccoli—*Brassica oleracea* L. var. *italica* Plenck", "Brussels sprouts—*Brassica oleracea* L. var. *gemmifera* Zenker", "Cardoon—*Cynara cardunculus* L.", "Celeriac—*Apium graveolens* L. var. *rapaceum* (Mill.) Gaudin", "Chard, Swiss—*Beta vulgaris* L. subsp. *vulgaris*", "Citron melon—*Citrullus lanatus* (Thunb.) Matsum. & Nakai var. *citroides* (L.H. Bailey) Mansf.", "Collards—*Brassica oleracea* L. var. *viridis* L.", "Corn, sweet—*Zea mays* L. subsp. *mays*", "Cornsalad—*Valerianella locusta* (L.) Laterr.", "Cress, water—*Nasturtium officinale* R. Br.", "Dandelion—*Taraxacum officinale* F.H. Wigg.", "Endive—*Cichorium endivia* L. subsp. *endivia*", "Gherkin, West India—

*Cucumis anguria* L. var. *anguria*", "Kale—*Brassica oleracea* L. var. *viridis* L.", "Kale, Chinese—*Brassica oleracea* L. var. *alboglabra* (L.H. Bailey) Musil", "Kale, Siberian—*Brassica napus* L. var. *pabularia* (DC.) Rchb.", "Melon—*Cucumis melo* L. subsp. *melo*", "Mustard, India—*Brassica juncea* (L.) Czern.", "Mustard, spinach—*Brassica rapa* var. *perviridis* L.H. Bailey", "Onion—*Allium cepa* L. var. *cepa*", "Onion, bunching (see Onion, Welsh)", "Parsnip—*Pastinaca sativa* L. subsp. *sativa*", "Pea—*Pisum sativum* L. subsp. *sativum*", "Pumpkin—*Cucurbita pepo* L., *C. moschata* Duchesne, and *C. maxima* Duchesne", "Radicchio (see Chicory)", "Rhubarb—*Rheum* × *hybridum* Murray", "Rutabaga—*Brassica napus* L. var. *napobrassica* (L.) Rchb.", "Spinach, New Zealand—*Tetragonia tetragonoides* (Pall.) Kuntze", "Squash—*Cucurbita pepo* L., *C. moschata* Duchesne, and *C. maxima* Duchesne", and "Watermelon—*Citrullus lanatus* (Thunb.) Matsum. & Nakai var. *lanatus*".

■ E. In paragraph (w), removing the words "noxious weed" and adding in their place the words "noxious-weeds" in their place wherever they appear.

■ F. Amending paragraph (z) by removing the heading "*Processing*" and adding in its place the heading "*Conditioning*", and removing in the first sentence the word "processing" and adding in its place the word "conditioning".

**§ 201.16 [Amended]**

■ 3. Section 201.16 in paragraph (b) is amended by removing the terms "*Borreria alata* (Aubl.)DC.", "*Carthamus oxyacanthus* M.Bieb ", "*Digitaria abyssinica* Stapf. (=*D. scalarum* (Schweinf.)", "*Ipomoea triloba* L.", "*Orobanche* spp.", "*Rottboellia cochinchinensis* (Lour.) Clayton (=*R.exaltata* (L.) L.f.)" and adding in alphabetical order the terms "*Carthamus oxyacantha* M. Bieb", "*Digitaria scalarum* (Schweinfurth) Chiovenda", "*Homeria* spp.", "*Rottboellia cochinchinensis* (Lour.) Clayton", "*Senecio inaequidens* DC.", "*Senecio madagascariensis* Poir.", "*Solanum tampicense* Dunal" and "*Spermacoce alata* (Aublet) de Candolle".

■ 4. Section 201.20 is revised to read as follows:

**§ 201.20 Germination.**

The label shall show the percentage of germination for each kind or kind and variety or kind and type of kind and hybrid of agricultural seed present in excess of 5 percent or shown in the labeling to be present in a proportion of 5 percent or less.

**§ 201.31a [Amended]**

■ 5. Section 201.31a is amended by adding the words "(Environmental Protection Agency Toxicity Category I)" after the word "substance" in paragraph (c)(1) and after the word "substances" in paragraph (c)(2) introductory text.

**§ 201.41 [Amended]**

■ 6. In § 201.41, paragraph (a), the word "less" is removed and the word "fewer" is added in its place.

■ 7. In § 201.48, paragraph (g) introductory text is amended by adding a new second sentence to read as follows:

**§ 201.48 Kind or variety considered pure seed.**

* * * * *

(g) * * * Seed units of smooth brome, fairway crested wheatgrass, standard crested wheatgrass, tall wheatgrass, intermediate wheatgrass, pubescent wheatgrass, western wheatgrass, fescues (*Festuca* spp.), and ryegrasses (*Lolium* spp.) if the caryopses are at least one-third the length of the palea; the caryopsis is measured from the base of the rachilla. * * *

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■ 8. Section 201.51 is amended by adding paragraph (a)(9) to read as follows:

**§ 201.51 Inert matter.**

* * * * *

(a) * * *

(9) Immature florets of smooth brome, fairway crested wheatgrass, standard crested wheatgrass, tall wheatgrass, intermediate wheatgrass, pubescent wheatgrass, western wheatgrass, fescues (*Festuca* spp.), and ryegrasses (*Lolium* spp.) in which the caryopses are less than one-third the length of the palea; the caryopsis is measured from the base of the rachilla.

* * * * *

■ 9. Section 201.65 is revised to read as follows:

**§ 201.65 Noxious-weed seeds in interstate commerce.**

Tolerances for rates of occurrence of noxious-weed seeds shall be recognized and shall be applied to the number of noxious-weed seeds found by analysis in the quantity of seed specified for noxious-weed seed determinations in § 201.46, except as provided in § 201.16(b). Rates per pound or ounce must be converted to the equivalent number of seeds found in § 201.46, Table 1, Minimum weight for noxious-weed seed examination (grams). Some tolerances are listed in the following table. The number found as represented by the label or test (Column X) will be considered within tolerance if not more than the corresponding numbers in Column Y are found by analysis in the administration of the Act. For numbers of seed greater than those in the table, a tolerance based on a degree of certainty of 5 percent (P=0.05) can be calculated by the formula, $Y=X+1.65\sqrt{X}+0.03$, where X is the number of seeds represented by the label or test and Y is the maximum number within tolerance.

| Number represented by label or test (X) | Maximum number within tolerances (Y) | Number represented by label or test (X) | Maximum number within tolerances (Y) | Number represented by label or test (X) | Maximum number within tolerances (Y) |
|---|---|---|---|---|---|
| 0 | 2 | 34 | 43 | 68 | 81 |
| 1 | 2 | 35 | 44 | 69 | 82 |
| 2 | 4 | 36 | 45 | 70 | 83 |
| 3 | 5 | 37 | 46 | 71 | 84 |
| 4 | 7 | 38 | 47 | 72 | 85 |
| 5 | 8 | 39 | 49 | 73 | 86 |
| 6 | 9 | 40 | 50 | 74 | 87 |
| 7 | 11 | 41 | 51 | 75 | 89 |
| 8 | 12 | 42 | 52 | 76 | 90 |
| 9 | 13 | 43 | 53 | 77 | 91 |
| 10 | 14 | 44 | 54 | 78 | 92 |
| 11 | 16 | 45 | 55 | 79 | 93 |
| 12 | 17 | 46 | 56 | 80 | 94 |
| 13 | 18 | 47 | 58 | 81 | 95 |

| Number represented by label or test (X) | Maximum number within tolerances (Y) | Number represented by label or test (X) | Maximum number within tolerances (Y) | Number represented by label or test (X) | Maximum number within tolerances (Y) |
|---|---|---|---|---|---|
| 14 | 19 | 48 | 59 | 82 | 96 |
| 15 | 21 | 49 | 60 | 83 | 97 |
| 16 | 22 | 50 | 61 | 84 | 98 |
| 17 | 23 | 51 | 62 | 85 | 99 |
| 18 | 24 | 52 | 63 | 86 | 101 |
| 19 | 25 | 53 | 64 | 87 | 102 |
| 20 | 27 | 54 | 65 | 88 | 103 |
| 21 | 28 | 55 | 67 | 89 | 104 |
| 22 | 29 | 56 | 68 | 90 | 105 |
| 23 | 30 | 57 | 69 | 91 | 106 |
| 24 | 31 | 58 | 70 | 92 | 107 |
| 25 | 32 | 59 | 71 | 93 | 108 |
| 26 | 34 | 60 | 72 | 94 | 109 |
| 27 | 35 | 61 | 73 | 95 | 110 |
| 28 | 36 | 62 | 74 | 96 | 111 |
| 29 | 37 | 63 | 75 | 97 | 112 |
| 30 | 38 | 64 | 76 | 98 | 114 |
| 31 | 39 | 65 | 78 | 99 | 115 |
| 32 | 41 | 66 | 79 | 100 | 116 |
| 33 | 42 | 67 | 80 | | |

■ 10. In Section 201.74, paragraph (a) is amended by removing the last sentence, and paragraph (c) is amended by adding a sentence at the end of the paragraph to read as follows:

**§ 201.74 Labeling of all classes of certified seed.**

* * * * *

(c) * * * The seed lot number or other identification number, the kind, and variety name (if certified to variety) shall appear on the official label and/or directly on the container in a position to be viewed in conjunction with the official certification label.

* * * * *

■ 11. In § 201.75, paragraph (c), the last sentence is revised to read as follows:

**§ 201.75 Interagency certification.**

* * * * *

(c) * * * The seed lot number or other identification number, the kind, and variety name (if certified to variety) shall appear on the official label and/or directly on the container in a position to be viewed in conjunction with the official certification label.

Dated: May 24, 2011.

**Rayne Pegg,**

*Administrator.*

[FR Doc. 2011–13497 Filed 6–1–11; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF ENERGY

## 10 CFR Part 431

**[Docket No. EERE–2008–BT–TP–0014]**

**RIN 1904–AB85**

## Energy Conservation Program: Energy Conservation Standards for Walk-In Coolers and Freezers; Correction

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

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** This document makes a correction to the regulations pertaining to the test procedure for walk-in coolers and freezers. The correction addresses an erroneous temperature condition for walk-in freezers.

**DATES:** *Effective Date:* June 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2192. E-mail: *Charles.Llenza@ee.doe.gov.*

In the Office of the General Counsel, contact Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–5709. E-mail: *Michael.Kido@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Energy Policy and Conservation Act (EPCA), as amended by section 312(c) of the Energy Independence and Security Act (EISA 2007), requires the Department of Energy (DOE) to prescribe a test procedure to measure the energy use of walk-in coolers and freezers (collectively, walk-ins). See 42 U.S.C. 6314(a). DOE recently satisfied this requirement by issuing a final rule establishing a test procedure for manufacturers to use when measuring the energy use of a walk-in unit. See 76 FR 21580 (April 15, 2011).

Since the publication of that rulemaking, it was recently discovered that an error is present in Appendix A of the regulatory text, which governs, among other things, the test conditions for walk-in coolers and freezers. That text, within the context of assessing the long-term thermal resistance of the insulating foam contained in the panel components used to construct a walk-in freezer container, uses, incorrectly and inconsistent with the statute, a prescribed test temperature of 35 °F ± 1 °F for freezers. The temperature that should have been inserted in that provision is 20 °F ± 1 °F. Periods should also have been included after that provision and the one following it that sets the temperature test condition for panels used in coolers. This document corrects these errors.

### II. Need for Correction

As published, the current provisions of 10 CFR part 431, Subpart R, Appendix A, include the incorrect testing temperature for manufacturers to

use when measuring the long-term insulation performance of the foam insulation used in a walk-in freezer unit. The published temperature, 35 °F ± 1 °F—a temperature that exceeds the safe storage of frozen perishable items—conflicts with the mandatory 20 °F requirement that Congress had prescribed as part of the EISA 2007 amendments governing the testing of insulation foam used in walk-in freezers. See 42 U.S.C. 6314(a)(9)(A)(iii) (indicating that the insulation value of the foam used with walk-in freezers shall be calculated using a temperature of 20 °F). This higher temperature also exceeds the temperature at which a walk-in freezer unit would normally operate. Additionally, the temperature conditions specified throughout the remaining portions of the recently promulgated test procedure for walk-in freezers are consistent with the operation of a freezer and substantially lower than 35 °F. See, *e.g.* 10 CFR part 431, subpart R, Appendix A, Sec. 5.3(a)(2)(i) (specifying the air temperature for freezer internal cooling conditions at -10 °F). DOE also notes that the preamble to the final rule explained that, consistent with the statute, a 20 °F requirement was being adopted in the regulations when testing the long-term performance of insulating foam for walk-in freezer applications. Another necessary correction to the text is that a period is needed for both conditions to clarify that the two conditions pertain to two situations—one for freezers and one for coolers.

In light of the applicable statutory requirement, the clear inconsistency between the currently published temperature testing condition and the actual temperatures at which the tested products operate, and the fact that DOE specifically stated in the final rule's preamble that the rule would apply a 20 °F requirement for walk-in freezer applications, DOE finds that there is good cause under 5 U.S.C. 553(b)(B) to not provide prior notice and an opportunity for public comment on the changes contained in this document. For the reasons discussed above, providing prior notice and an opportunity for public comment would be unnecessary and contrary to the public interest.

Accordingly, this correction document revises the temperature requirement specified in 10 CFR part 431, subpart R, Appendix A, section 5.2(a)(1)(i) to specify a 20 °F requirement for testing the insulation performance of walk-in freezer insulation foam and adds a period at the end of 10 CFR part 431, subpart R, Appendix A, sections 5.2(a)(1)(i) and 5.2(a)(1)(ii).

**List of Subjects in 10 CFR Part 431**

Administrative practice and procedure, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC on May 26, 2011.

**Kathleen Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.*

For the reasons stated in the preamble, DOE corrects 10 CFR part 431 as set forth below.

## PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

**Appendix A [Corrected]**

■ 2. In Appendix A to subpart R of part 431, revise sections 5.2(1)(i) and 5.2(1)(ii) to read as follows:

**Appendix A to Subpart R of Part 431—Uniform Test Method for the Measurement of Energy Consumption of the Components of Envelopes of Walk-In Coolers and Walk-In Freezers**

* * * * *

*5.2 Measuring Long Term Thermal Resistance (LTTR) of Insulating Foam*

* * * * *

(1) * * *

(i) For freezers: 20 °F ± 1 °F must be used.

(ii) For coolers: 55 °F ± 1 °F must be used.

* * * * *

[FR Doc. 2011–13653 Filed 6–1–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2011–0548; Directorate Identifier 2011–SW–025–AD; Amendment 39–16710; AD 2011–12–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S–92A Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the Sikorsky Model S–92A helicopters. This AD requires a nondestructive inspection (NDI), eddy current or fluorescent penetrant inspection (FPI), of each main gearbox (MGB) upper housing assembly rib on the left, right, and forward MGB mounting foot at specified intervals based on the MGB upper housing assembly hours time-in-service (TIS). If there is a crack, this AD requires replacing the MGB upper housing assembly with an airworthy MGB upper housing assembly. This AD is prompted by a report of a crack found on the MGB upper housing assembly left mounting foot forward rib that cannot be detected visually. We are issuing this AD to prevent loss of the MGB and subsequent loss of control of the helicopter.

**DATES:** This AD is effective June 17, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 17, 2011.

We must receive comments on this AD by August 1, 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, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, 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 identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop S581A, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.*

**Examining the AD Docket**

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

section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:**

Michael Schwetz, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7761, fax (781) 238–7170, *Michael.Schwetz@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Discussion

We are adopting a new AD for the Sikorsky Model S–92A helicopters. This AD requires an NDI, eddy current or FPI, of each MGB upper housing assembly rib on the left, right, and forward MGB mounting foot for a crack because it cannot be detected visually. This AD is prompted by a report of a crack found on the MGB upper housing assembly left mounting foot forward rib during removal of an MGB that had reached its life limit of 1,000 hours TIS. The MGB mounting foot has a history of two types of cracks. The visual inspection for these two types of cracks is required in AD 2010–24–04 (75 FR 70812, November 19, 2010). The discovery of a third type of crack on the left mounting foot forward rib may not be reliably detected by visual inspection. This condition, if not detected and corrected, could result in loss of the MGB, and subsequent loss of control of the helicopter.

## Relevant Service Information

We reviewed Sikorsky Alert Service Bulletin No. 92–63–025A, Revision A, dated May 12, 2011 (ASB). The ASB specifies a one-time NDI of the MGB assembly at the mounting foot ribs for cracks.

## FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other helicopters of the same type design.

## AD Requirements

This AD requires, at specified intervals based on the MGB upper housing assembly hours TIS, eddy current or FPI inspecting the left, right, and forward MGB upper housing mounting foot ribs for a crack. If there is a crack, the AD requires replacing the MGB upper housing assembly with an airworthy MGB upper housing assembly. This AD requires accomplishing the actions by following the specified portions in the ASB.

## Differences Between the AD and the Service Information

We refer to "flight hours" as "hours TIS." This AD requires the inspection to be done by an ASNT Level 2 or equivalent inspector and this AD requires recurring inspections.

## FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short compliance time required to NDI certain MGB upper housing assembly mounting foot ribs for a crack. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

## Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–0548 and Directorate Identifier 2011–SW–025–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

## Costs of Compliance

We estimate that this AD affects 29 helicopters of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per helicopter | Cost on U.S. operators |
|---|---|---|---|---|
| NDI of each left, right, and forward MGB mounting foot rib. | 29 helicopters × 3.5 work-hours per inspection × 16 inspections per year × $85 per work-hour = $138,040.<br>1 × 56 work-hours × $85 per work-hour = $4,760, to replace 1 MGB. | $286,000 for a MGB upper housing. | $4,760 to do 16 NDI inspections per year. | $428,800, assuming 1 replacement of the MGB upper housing assembly. |

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

(3) Does not warrant making distinction for intrastate aviation in Alaska, and

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2011–12–03 Sikorsky Aircraft Corporation (Sikorsky):** Amendment 39–16710; Docket No. FAA–2011–0548; Directorate Identifier 2011–SW–025–AD.

**Effective Date**

(a) This AD is effective June 17, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) Model S–92A helicopters with main gearbox (MGB) upper housing assembly, part number (P/N) 92351–15110–042, –043, –044, –045, or –046, installed, certificated in any category.

**Unsafe Condition**

(d) This AD is prompted by a report of a crack found on the MGB left mounting foot forward rib that may not be found during a visual inspection. We are issuing this AD to prevent loss of a MGB and subsequent loss of control of the helicopter.

**Compliance**

(e) For each MGB upper housing assembly with 700 or more hours time-in-service (TIS), within 30 hours TIS, unless already done, or for each MGB upper housing assembly with more than 500 hours TIS but less than 700 hours TIS, within 50 hours TIS, unless already done, and for all helicopters thereafter at intervals not to exceed 50 hours TIS:

(1) Clean and Eddy Current inspect the forward, left, and right MGB mounting foot ribs for a crack by following the Accomplishment Instructions, paragraphs 3.C. through 3.D.(2)(d), of Sikorsky Alert Service Bulletin No. 92–63–025A, Revision A, dated May 12, 2011 (ASB); or

(2) Clean and fluorescent penetrant inspect (FPI) the MGB mounting foot ribs for a crack by following the Accomplishment Instructions, paragraphs 3.E.(1) through 3.E.(5), of the ASB.

(3) An inspector qualified to ASNT Level II or equivalent is required to perform the nondestructive inspection (NDI), by Eddy Current or FPI, of the left, right, and forward MGB mounting foot ribs for a crack.

(f) If there is a crack, before further flight, replace the MGB upper housing assembly with an airworthy MGB upper housing assembly.

**Note:** Sikorsky has developed a Phase III MGB upper housing assembly, P/N 92351–15310–041, is not subject to the "Applicability" of this AD.

**Alternative Methods of Compliance (AMOCs)**

(g)(1) The Manager, Boston Aircraft Certification Office, 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 Additional Information section of this AD.

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

**Additional Information**

(h) For more information about this AD, contact Michael Schwetz, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7761, fax (781) 238–7170, E-mail *Michael.Schwetz@faa.gov.*

**Material Incorporated by Reference**

(i)(1) Inspect the MGB upper housing assembly mounting foot ribs for a crack by following the specified portions of Sikorsky Alert Service Bulletin No. 92–63–025A, Revision A, dated May 12, 2011. The Director of the Federal Register approved the incorporation by reference of the service information.

(2) For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop S581A, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.*

(3) Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Subject**

(j) The Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code is 6320 Main Gearbox.

Issued in Fort Worth, Texas on May 24, 2011.

**Kim Smith,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2011–13531 Filed 6–1–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0506; Directorate Identifier 2010–SW–020–AD; Amendment 39–16703; AD 2011–11–04]**

**RIN 2120–AA64**

## Airworthiness Directives; L'Hotellier Portable Halon 1211 Fire Extinguishers

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for the specified fire extinguishers. This action requires replacing each unairworthy portable fire extinguisher with an airworthy portable fire extinguisher. This amendment is prompted by an ongoing investigation that has established that unapproved Halon 1211 has been used to fill L'Hotellier portable fire extinguishers that are likely to be onboard various model helicopters. The actions specified in this AD are intended to prevent using contaminated gas that may reduce fire suppression and release toxic fumes that would endanger the safety of the helicopter and its occupants.

**DATES:** Effective June 17, 2011.

Comments for inclusion in the Rules Docket must be received on or before August 1, 2011.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD:

• *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.

You may get the service information identified in this AD from L'HOTELLIER, 4 rue Henri Poincare, 92167 ANTONY Cedex, France, telephone +33(0)1 55 59 09 65, fax +33(0)1 46 66 71, E-mail *Alain.Dorneau@hs.utc.com.*

*Examining the Docket:* You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** DOT/FAA Southwest Region, J. R. Holton, Jr., ASW–112, Aviation Safety Engineer, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–4964, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

## Discussion

This amendment adopts a new AD for the specified fire extinguisher. This action requires replacing each portable fire extinguisher containing unapproved, contaminated Halon 1211 with a portable fire extinguisher containing approved Halon 1211. This amendment is prompted by an ongoing investigation that has established that unapproved Halon 1211 has been used to fill L'Hotellier portable fire extinguishers that are likely to be onboard various model helicopters. This condition, if not corrected, may reduce fire suppression and release toxic fumes that would endanger the safety of the helicopter and its occupants.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2009–0277R1, dated February 5, 2010, to correct an unsafe condition for L'Hotellier portable fire extinguishers, part number (P/N) 863520–00. EASA reports that the Civil Aviation Authority of the United Kingdom (UK) has informed them that significant quantities of Halon 1211 gas, determined to be outside the required specification, have been supplied to the aviation industry for use in fire extinguishers. Halon 1211 is used in portable fire extinguishers, usually fitted or stowed in aircraft passenger cabins and flight decks. An ongoing investigation has established that LyonTech Engineering Ltd, a UK-based company, has supplied unapproved Halon 1211 to L'Hotellier. This Halon 1211 has subsequently been used to fill certain portable fire extinguishers that are likely to be installed in or carried on various model helicopters including Eurocopter France Model EC120B; AS350B, BA, B1, B2, B3, and D; AS355E, F, F1, N, and NP; and SA341G and 342J helicopters, with a portable fire extinguisher, P/N 863520–00, with a serial-number listed in the L'Hotellier service information.

## Related Service Information

L'Hotellier has issued Service Bulletin 863520–26–001, dated December 21, 2009 (SB). The SB specifies returning each affected serial-numbered fire extinguisher to L'Hotellier. The SB also specifies that if a label containing, among other information, "Application of SBA 863520–26–001" is installed on a fire extinguisher, indicating that it has been reconditioned with pure Halon 1211 according to L'Hotellier internal procedure ITR70030–00, that reconditioned or new fire extinguisher can be placed in the helicopter. EASA classified this SB as mandatory and issued EASA AD No. 2009–0277R1, dated February 5, 2010, to ensure the continued airworthiness of these helicopters.

## FAA's Evaluation and Unsafe Condition Determination

These products have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, their technical representative, has notified us of the unsafe condition described in the MCAI AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

## Differences Between This AD and the EASA AD

We require a 60-day compliance time because we have determined that 60 days will ensure an acceptable level of safety versus allowing a 6-month compliance time. We have included the affected serial numbers of the fire extinguishers in the AD rather than referring to the SB for the serial numbers.

## FAA's Determination and Requirements of This AD

This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, this AD is being issued to replace unairworthy fire extinguishers with airworthy fire extinguishers to prevent using contaminated gas that may reduce fire suppression and release toxic fumes that would endanger the safety of the helicopter and its occupants.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter in the event of a fire. Therefore, replacing each unairworthy fire extinguisher with an airworthy fire extinguisher is required within 60 days, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

## Costs of Compliance

We estimate that this AD will affect about 1,000 helicopters. We also estimate that it will take about 1work-hour per helicopter to inspect and replace the fire extinguisher. The average labor rate is $85 per work-hour. Required parts will cost about $212 to replace each fire extinguisher. Based on these figures, we estimate the cost of this AD on U.S. operators is $297,000, assuming the fire extinguishers are replaced on the estimated fleet.

## Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2011–0506; Directorate Identifier 2010–SW–020–AD" at the beginning of your comments. We specifically invite comments on the

overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light 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 with FAA personnel concerning this AD. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

### Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

### 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.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2011–11–04 L'Hotellier:** Amendment 39–16703. Docket No. FAA–2011–0506; Directorate Identifier 2010–SW–020–AD.

*Applicability:* Portable Halon 1211 fire extinguisher, part number 863520–00, with a serial number listed in Table 1 of this AD, installed on various model helicopters including Eurocopter France Model EC120B; AS350B, BA, B1, B2, B3, and D; AS355E, F, F1, N, and NP; and SA341G or 342J helicopters, certificated in any category, except for a fire extinguisher that has a label containing a reference to "SBA 863520–26–001" indicating that it has been reconditioned with pure Halon 1211 according to L'Hotellier internal procedure ITR70030–00.

TABLE 1

| From S/N with a prefix of "RM" | Through S/N with a prefix of "RM" | Quantity |
|---|---|---|
| 69308 | 69355 | 48 |
| 69540 | 69599 | 60 |
| 69601 | 69674 | 74 |
| 69812 | 69867 | 56 |
| 69888 | 69952 | 65 |
| 70177 | 70271 | 95 |
| 70273 | 70302 | 30 |
| 70457 | 70555 | 99 |
| 70734 | 70752 | 19 |
| 70860 | 70883 | 24 |
| 70959 | 71034 | 76 |
| 71034 | 71185 | 152 |
| 71355 | 71385 | 31 |
| 71581 | 71619 | 39 |
| 71652 | 71690 | 39 |

*Compliance:* Required as indicated, unless accomplished previously.

The actions specified in this AD are intended to prevent using contaminated gas that may reduce fire suppression and release toxic fumes that would endanger the safety of the helicopter and its occupants.

(a) Within 60 days, replace each unairworthy fire extinguisher with an airworthy fire extinguisher.

**Note 1:** L'Hotellier Service Bulletin 863520–26–001, dated December 21, 2009, contains information that relates to the subject of this AD.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, ATTN: DOT/FAA Southwest Region, J.R. Holton, Jr., ASW–112, Aviation Safety Engineer, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–4964, fax (817) 222–5961, for information about previously approved alternative methods of compliance. deactivated.

(c) The Joint Aircraft System/Component (JASC) Code is 2622: Fire Bottle, Portable.

(d) This amendment becomes effective on June 17, 2011.

**Note 2:** The subject of this AD is addressed in European Aviation Safety Agency AD No. 2009–0277R1, dated February 5, 2010.

Issued in Fort Worth, Texas, on May 11, 2011.

**Kim Smith,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2011–13635 Filed 6–1–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0543; Directorate Identifier 2011–CE–018–AD; Amendment 39–16709; AD 2011–12–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Viking Air Limited Model DHC–3 (Otter) Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above that are equipped with a Honeywell TPE331–10 or –12JR turboprop engine installed per Supplemental Type Certificate (STC) SA09866SC. This AD requires incorporating revised airspeed limitations and marking the airspeed indicator accordingly. There is also a requirement for the installation of a temporary placard until the airspeed indicator can be modified but not to

exceed a certain period of time. This AD was prompted by analysis that showed that airspeed limitations for the affected airplanes are not adjusted for the installation of a turboprop engine as stated in the regulations. We are issuing this AD to prevent the loss of airplane structural integrity due to the affected airplanes being able to operate at speeds that exceed the speeds established in the Federal aviation regulations for safe operation.

**DATES:** This AD is effective June 2, 2011.

We must receive comments on this AD by July 18, 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.

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The 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:** Peter W. Hakala, Aerospace Engineer, FAA Rotorcraft Directorate, Fort Worth Special Certification Office, ASW–190, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; phone: (817) 222–5145; fax: (817) 222–5785; e-mail: *peter.w.hakala@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Discussion

Recent analysis by the FAA on the Viking Air Limited Model DHC–3 (Otter) airplanes equipped with a Honeywell TPE331–10 or –12JR turboprop engine installed per Supplemental Type Certificate (STC) SA09866SC revealed that airspeed limitations for the affected airplanes are not adjusted for the installation of a turboprop engine as stated in the regulations. 14 CFR 23.1505 paragraph (c) applies to turbine engine airplanes and includes the following: "* * * a maximum operating limit speed (VMO/MMO-airspeed or Mach number, whichever is critical at a particular altitude) must be established as a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training operations. VMO/MMO must be established so that it is not greater than the design cruising speed VC/MC and so that it is sufficiently below VD/MD and the maximum speed shown under 23.251 to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between VMO/MMO and VD/MD or the maximum speed shown under 23.251 may not be less than the speed margin established between VC/MC and VD/MD under 23.335(b), or the speed margin found necessary in the flight test conducted under 23.253."

The FAA has discovered that the affected airplanes, as currently certificated, have airspeed indicators with color band markings that do not comply with 14 CFR 23.1505(c). This could result in reduced safety margins that may result in an unsafe condition.

Based on further analysis with application of the regulations, the FAA has determined that an airspeed limitation of 134 miles per hour (mph) for airplanes with floats and 144 mph for basic land airplanes would address the concern for the unsafe condition.

This condition, if not corrected, could result in loss of airplane structural integrity due to the affected airplanes being able to operate at speeds that exceed the speeds established in the Federal aviation regulations for safe operation.

## FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

## AD Requirements

This AD requires incorporating revised airspeed limitations and marking the airspeed indicator accordingly. There is also a requirement for the installation of a temporary placard until the airspeed indicator can be modified but not to exceed a certain period of time.

## FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because it could result in loss of airplane structural integrity due to the affected airplanes being able to operate at speeds that exceed the speeds established in the Federal aviation regulations for safe operation. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

## Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–0543 and Directorate Identifier 2011–CE–018–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

## Costs of Compliance

We estimate that this AD affects 25 airplanes of U.S. registry

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Airplane Flight Manual Limitation, Placard, and Airspeed Indicator Modification. | 10 work-hours × $85 per hour = $850 ..... | $90 | $940 | $23,500 |

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2011–12–02 Viking Aircraft Limited:** Amendment 39–16709; Docket No. FAA–2011–0543; Directorate Identifier 2011–CE–018–AD.

**Effective Date**

(a) This AD is effective June 2, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Viking Aircraft Limited Model DHC–3 (Otter) airplanes, all serial numbers, that are:

(1) equipped with a Honeywell TPE331–10 or –12JR turboprop engine installed per Supplemental Type Certificate (STC) SA09866SC (Texas Turbines Conversions, Inc.); and

(2) certificated in any category.

**Subject**

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code: 11, Placards and Markings.

**Unsafe Condition**

(e) This AD was prompted by analysis that showed that airspeed limitations for the affected airplanes are not adjusted for the installation of a turboprop engine as stated in the regulations. We are issuing this AD to prevent of the loss of airplane structural integrity due to the affected airplanes being able to operate at speeds that exceed the speeds established in the Federal aviation regulations for safe operation.

**Compliance**

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

TABLE 1—ACTIONS, COMPLIANCE, AND PROCEDURES

| Actions | Compliance |
|---|---|
| (1) Insert the following information into the Limitations section of the airplane flight manual (AFM) or AFM supplement: "Airspeed limitation: VMO = 144 MPH for land/ski plane and VMO = 134 MPH for seaplane."<br>(i) This can be done by inserting this AD into the Limitations section of the AFM or AFM supplement.<br>(ii) Inserting the information into the Limitations section of the AFM or AFM supplement may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR §§ 43.9 (a)(1)–(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR §§ 91.417, 121.380, or 135.439. | Before further flight after the effective date of this AD. |
| (2) Fabricate a placard using letters of at least ⅛-inch in height with the following words: "Never exceed airspeed of 144 MPH, VMO speed limit for land/ski plane and 134 MPH, VMO speed limit for seaplane." Install this placard on the airplane instrument panel next to the airspeed indicator within the pilot's clear view. | Within the next 10 hours time-in-service (TIS) after the effective date of this AD. |
| (3) Modify the airspeed indicator accordingly to reflect the above limitation. Mark the airspeed indicator with a red radial line at 144 MPH for a land/ski plane and/or with a red radial at 134 MPH for a seaplane. This instrument modification must be done by an appropriately rated repair facility.<br>(i) This action eliminates the need for the placard required by paragraph (f)(2) above.<br>(ii) This action can be done instead of the placard requirement in paragraph (f)(2) provided it is done within the next 10 hours TIS after the effective date of this AD. | Within the next 30 days after the effective date of this AD. |

**Alternative Methods of Compliance (AMOCs)**

(g)(1) The Manager, Fort Worth Special Certification Office, 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.

(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**

(h) For more information about this AD, contact Peter W. Hakala, Aerospace Engineer, FAA Rotorcraft Directorate, Fort Worth Special Certification Office, ASW–190, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; phone: (817) 222–5145; fax: (817) 222–5785; e-mail: *peter.w.hakala@faa.gov.*

Issued in Kansas City, Missouri, on May 25, 2011.

**Earl Lawrence,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–13532 Filed 6–1–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2010–0857; Directorate Identifier 2010–NM–156–AD; Amendment 39–16708; AD 2011–12–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Koito Industries, Ltd., Seats and Seating Systems Approved Under Technical Standard Order (TSO) TSO–C39b, TSO–C39c, or TSO–C127a

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires determining if affected seats and seating systems and their components are compliant with certain FAA regulations, and removing those seats, seating systems, and their components that are shown to be unsafe from the affected fleet. This AD was prompted by a determination that the affected seats and seating systems may not meet certain flammability, static strength, and dynamic strength criteria. Failure to meet static and dynamic strength criteria could result in injuries to the flightcrew and passengers during emergency landing conditions. In the event of an in-flight or post-emergency landing fire, failure to meet flammability criteria could result in an accelerated fire. We are issuing this AD to prevent accelerated fires and injuries to the flightcrew and passengers.

**DATES:** This AD is effective August 1, 2011.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Patrick Farina, Aerospace Engineer, Cabin Safety Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5344; fax: 562–627–5210; e-mail: *Patrick.Farina@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on September 24, 2010 (75 FR 58340). That NPRM proposed to require determining if affected seats and seating systems and their components are compliant with certain FAA regulations, and removing those seats, seating systems, and their components that are shown to be unsafe from the affected fleet.

### Ex Parte Contact

On October 14, 2010, during two separate meetings, we met to discuss the NPRM with the European Aviation Safety Association (EASA), Japanese Civil Airworthiness Bureau (JCAB), Airbus, and Boeing, as well as with other national airworthiness authorities and operators. On October 20, 2010, we had a similar meeting with additional authorities and operators. We emphasized that the meetings were not a substitute for the formal comment process and would consider comments made through the comment process identified in the NPRM. Summaries of these meetings are posted in the AD docket on the Internet at *http://www.regulations.gov.*

### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

### Request To Withdraw the NPRM

Several commenters either inferred or specifically requested that we withdraw the NPRM.

The Association of European Airlines (AEA) stated that the combined safety analysis carried out by EASA/FAA for the NPRM is fundamentally flawed because it assumes "a catastrophic failure." The AEA also stated that new test data are available to the FAA. AEA added that Koito (witnessed by the JCAB) has carried out extensive retesting of the seats to prove they are safe and meet all of the certification criteria. AEA concluded that these data have not been evaluated by the FAA, which could negate the issuance of an FAA AD.

The Association for Asia Pacific Airlines (AAPA), China Airlines, and Japan Transocean Airlines (JTA) stated that the evaluation and use of JCAB data could negate the justification for the NPRM.

Koito Industries (Koito) respectfully questioned the basis for the NPRM moving forward, absent FAA verification and support that an unsafe condition exists. Koito stated it deeply regrets the circumstances surrounding this AD. Koito submitted that no actual unsafe condition has been verified even for production seats where discrepancies existed between drawings and materials used to show compliance. Koito added that the NPRM states only that a potential unsafe condition could exist. Koito submitted that non-compliance with regulations does not necessarily equate to an unsafe condition. Koito stated that the testing results will provide much-needed data for the FAA to make the required determination under section 39.5 of the Federal Aviation Regulations (14 CFR 39.5), and then the FAA will be able to determine whether a safety-of-flight issue exists that is sufficient to warrant an AD in accordance with the requirements of section 39 of the Federal Aviation Regulations (14 CFR 39). Koito concluded that issuing an AD prior to reviewing forthcoming testing data to determine whether an unsafe

condition exists could result in unnecessary burdens on aircraft manufacturers and affected airlines.

Nippon Cargo Airlines (NCA) stated it could not accept the issuance of an AD prior to completion of all appropriate actions (including re-testing, conformity assessment, and establishment of the refurbishment plan) that should be performed by Koito. NCA stated that we should establish a feasible compliance period based on service bulletin recommendations and status of parts availability. We infer NCA is requesting we withdraw the NPRM.

EVA Airways stated that it preferred an alert service bulletin be issued instead of an AD because a service bulletin would minimize the impact on daily operation and minimize the cost impact on operators.

We do not agree to withdraw the NPRM. It is a fact that some seats have failed during testing. Failure of the seat, in combination with an emergency landing, is considered catastrophic. The purpose of the required initial determination (testing) is to determine which seats might fail. The purpose of an AD is to restore the affected fleet to an acceptable level of safety. Only those seats that fail the testing will be required to be removed from service. EASA and the FAA have reviewed the data generated by Koito, under the oversight of JCAB, and we have determined that this AD is necessary to address the identified unsafe condition. In addition, certification of these seats was obtained through false pretenses, and thus, until the seats are re-certified in whole, they need to be appropriately marked and actions must be done in accordance with this AD. We have not revised the AD in this regard.

**Request for Extension of Comment Period**

Multiple commenters requested an extension of the comment period, and most wanted the extension in order to allow review of the Koito/JCAB data. AAPA, All Nippon Airways (ANA), The Boeing Company, China Airlines, Continental Airlines, Copa Airlines, EVA Air, Japan Airlines International (JAL), JTA, Jett8 Airlines, Kuwait Airways, NCA, Thai Airways, and Virgin Blue International Airlines (V Australia) requested that the comment period be extended by 90 days in order to provide time for the parties concerned to better understand the Koito/JCAB test data. The AAPA and AEA stated that because the JCAB is the primary certification and design authority for the Koito seats, and has been able to confirm that production drawings were retained by Koito and checked for conformity, the new JCAB data should be given credit. The AAPA and China Airlines stated that the failure to do so would ignore the huge potential burden the NPRM would impose on national airworthiness authorities providing oversight and air carriers. Continental requested that the FAA work with the JCAB to determine the validity of the data and accept data that demonstrate compliance on specific seat models to reduce the potential burden on the operators.

AEA requested an extension of the comment period for six months. AEA commented that the NPRM calls for in-service seats to be used for testing, but that the same goal can be achieved by carrying out a conformity evaluation of in-service seats against those tested by Koito, under JCAB supervision.

Koito requested an extension of the comment period for three months. Koito stated that it is confident that its comprehensive safety testing, conducted under strict JCAB supervision and in cooperation with Airbus, Boeing, and JCAB-regulated airlines, will assist the FAA and EASA in preparing a more targeted and effective AD, without compromising in any way the level of safety that the AD seeks to ensure. Koito added that once the FAA and EASA have thoroughly evaluated Koito's testing methodology, procedures, and results, and are satisfied that Koito's testing can be a reliable basis for determining the safety of in-service seats, the testing results could be widely shared among all the parties affected by the AD. Koito noted that this would allow the affected parties to provide the FAA with more precise and targeted comments before the AD is adopted. Koito also stated that the FAA itself could gain important insights from reviewing Koito's testing methodology and testing results before issuing a final AD.

Airbus commented that the comment period should be extended (but did not specify the length of the requested extension) to allow review of the Koito/JCAB tests results.

Singapore Airlines did not request an extension of the comment period; however, Singapore Airlines requested that JCAB data be evaluated by the FAA. Singapore Airlines stated that JCAB showed that all design changes made to in-service seat models have been identified and analyzed, with no problem identified relating to metallic parts, and no significant differences between seats manufactured and production drawings.

We disagree with extending the comment period. As stated previously, we have discussed the data in briefings with EASA and the operators. EASA and the FAA have since reviewed the data generated by Koito, under the oversight of JCAB, and concluded that test data from new-build test articles can be used to demonstrate compliance to the static strength requirements of the AD; we have added Notes 3 through 10 to this AD to provide clarification on testing. Test data from new-build test articles can also be used for the flammability requirements in combination with conformity of in-service seat cushions. The purpose of this AD is to restore the affected fleet to an acceptable level of safety. To delay this action would be inappropriate, since we have determined that an unsafe condition exists and that the actions required by this AD must be conducted to ensure continued safety. Failure of the seat in combination with an emergency landing is considered catastrophic. The required initial determination (testing) will determine if seats do not meet FAA regulations and those that do not could fail. Only those seats that fail the testing will be required to be removed from service. We have not changed this AD in this regard.

**Request for Follow-Up Briefing Session**

AAPA, China Airlines, EVA Airways, JAL, Jett8 Airlines, NCA, and Thai Airways requested a follow-up briefing session be made to carriers similar to the follow-up session agreed on in Cologne for carriers in the Asian-Pacific (ASPAC) region. Kuwait Airways requested a follow-up briefing session be made to carriers similar to the follow-up session agreed on in Cologne for concerned carriers. ANA requested a follow-up briefing session be made to carriers similar to the follow-up session agreed on in Singapore.

We agree it is beneficial for affected parties to meet again. We plan on organizing a meeting with affected parties shortly after the AD is published. No change to the AD is necessary regarding this issue.

**Request for Consistency Between the Applicability of the FAA NPRM and the EASA Proposed AD (PAD)**

JAL and JCAB requested consistency between the applicability of the FAA NPRM and the EASA PAD because the NPRM applies to the component and the PAD applies to airplanes having the component. JAL stated that in the FAA NPRM, the proposed AD is to be applied to passenger seats manufactured by Koito; however, the EASA PAD is applied to airplanes equipped with passenger seats manufactured by Koito. JAL requested a unified applicability to avoid unexpected burdens on the

airlines/operators. JCAB stated the applicability between the FAA NPRM and EASA PAD should be further harmonized so as to avoid confusion among authorities and operators of countries outside the U.S. and Europe.

We acknowledge the importance of harmonizing with EASA. The FAA has granted an approval for the seats themselves, and so the seats are the basis of the applicability of the FAA AD. This is different in the EASA system, where the approval is based on airplane installation. Although the description of the applicability is different, the overall effect of the two ADs should be essentially the same. Nonetheless, while it is thought that all the seat models have been identified, there may be models not identified. Commenters have also noted that the NPRM did not address several older types of seats, approved under technical standard order (TSO) TSO–C39, TSO–C39a, and TSO–C127, as well as non-TSO models. We intend to supersede this AD to address any affected seats that are determined to not be covered by this AD. However, we have not revised this AD in this regard.

**Request To Match the Affected Seats in the Applicability of the FAA NPRM With Those in the EASA PAD**

Several commenters requested that the affected seats in our applicability match those in the EASA PAD. JCAB identified 74 models listed in the NPRM that are not produced under TSO–C39b, TSO–C39c, or TSO–C127a: 15 models that are approved under TSO–C127, 22 models that are approved under TSO–C39a, and 37 models that do not have TSO approvals. JCAB noted that seats models approved under TSO–C39a and TSO–C127 and those without TSO approval are not covered by the proposed AD by its current text. JCAB requested that we harmonize our applicability with EASA's applicability.

JCAB also stated that there are seat models listed in table 1 of the NPRM that are not approved under TSO–C39b, TSO–C39c, or TSO–C127a, as specified in paragraph (c) of the NPRM. JCAB requested that we revise table 1 and paragraph (c) of the NPRM to clarify the intent of the NPRM for these seat models.

Koito stated that the NPRM contains 32 seat model numbers that were not produced under TSO–C39b, TSO–C39c, or TSO–C127a and should be removed.

Boeing requested that TSO–C127 be added to the applicability of the NPRM if the intent of the AD is to be applicable to all Koito seats. Boeing stated that some Koito seats were certified to TSO–C127 prior to the release of TSO–C127a.

We agree that certain seat models that should be covered by the FAA AD were not explicitly covered by the applicability of the NPRM. However, we do not agree to revise the applicability of this AD. Adding seats models to the applicability would require issuance of a supplemental NPRM instead of a final rule. To delay this action would be inappropriate, since we have determined that an unsafe condition exists and that the actions required by this AD must be done to ensure continued safety. We might issue further rulemaking to address other seat models, including models approved under other TSOs and those without TSO approval. The future rulemaking might revise the applicability of the AD to include all seat models produced by Koito, installed on any aircraft by any means. We have not revised this AD in this regard.

**Request To Revise Applicability by Removing Certain Seats Models From Table 1**

JCAB stated that 11 models of Koito seats have seat cushions provided by another TSO holder (TSO–C72c). We infer JCAB is requesting that seat cushions made by another manufacturer be removed from table 1 of the NPRM.

We do not agree. The JCAB did not identify which seat models were issued with TSO–C72c seat cushions provided by an outside source (non-Koito produced). Seats for which the cushion approval is independent of the Koito TSO authorization can show compliance with the cushion flammability requirements using the third-party approval basis under TSO–C72c. As it is possible for the seat to be modified by a third party to procure seat cushions by Koito, we have not revised this AD in this regard. The TSO–C72c seat cushion is a requirement of TSO–C127a.

**Request To Remove Seat Models Installed on Certain Airplanes From the Applicability**

JCAB requested that seat models for Mitsubishi YS–11 and Fokker F–27 airplanes, which were designed and manufactured well before the mid-1980s, be removed from table 1 of the NPRM. JCAB stated that according to the conclusions of the investigation conducted by Koito Manufacturing, a parent company of Koito Industries, the fraudulent activities by Koito Industries started in the mid-1980s. JCAB stated its investigation revealed the same results, and therefore, it is believed that those seats designed and manufactured before the mid-1980s were properly certified and need not be the subject of ADs.

We acknowledge the commenter's request. However, we have not received data to identify seats certified without falsified data. In addition, as discussed previously, certain seats might not be part of the applicability of this AD because this AD only applies to seats and seating systems having certain models numbers that are approved under TSO–C39b, TSO–C39c, or TSO–C127a. However, under the provisions of paragraph (l) of this AD, we will consider requests for approval of an alternative method of compliance (AMOC) if sufficient data are submitted to substantiate that the new AMOC would provide an acceptable level of safety. We have not revised this AD in this regard.

**Request To List Both the Seat Model and Part Number in the Applicability**

Airbus requested the NPRM list both the seat model and generic part number in the AD applicability.

We disagree. The commenter did not justify its request. We have determined that, to capture all Koito seats, including third-party modified seats and second-hand seats, reference to the model alone is appropriate for the applicability of the AD. The affected model numbers are identified in table 1 of this AD. We have not revised this AD in this regard.

**Request To Delete Fokker Services B.V. From Table 2 in the Applicability**

Fokker Services B.V. requested we remove "Fokker Services B.V." from table 2 of the NPRM. Fokker Services B.V. indicated that it did not certificate the installation of seats or seating systems by Koito, nor was it aware of any Koito seats installed on aircraft types on which Fokker Services B.V. is the type certificate holder.

We disagree. All operators must confirm whether the affected seats and seating systems are installed. Table 2 of this AD is a non-inclusive list of manufacturers on which the seats and seating systems may be installed. JCAB has identified seat model AFS–105 installed at one time on Fokker aircraft (type certificate data sheet A–817). Although it is probable that this model has been removed and destroyed, it has not been verified. We have not revised this AD in this regard.

**Request To Explain Effect of NPRM on Imported Airplanes**

An anonymous commenter requested that we clarify the effect of the NPRM on imported airplanes. The commenter questioned whether an operator of a non-U.S. registered airplane can obtain a certificate of airworthiness from the FAA after the AD is released without re-

testing Koito seats. The commenter stated that for a newly imported airplane, the seats would be affected by the "Parts Installation" requirement specified in paragraph (h) of the NPRM, which does not allow installation of a non-retested Koito seat after the effective date of the AD.

We agree to clarify the effect of this AD on imported airplanes. When an operator imports an airplane onto the U.S. Register, the airplane is subject to all applicable FAA ADs. Moving an airplane from one register to another would not be classified as a new installation if there is no physical design change to the subject airplane. An imported airplane is subject to the compliance times in this AD. We have not revised this AD in this regard.

**Request for Compliance Time Extension**

Multiple commenters requested that we extend the compliance times specified in the NPRM.

ANA requested that we extend the compliance times to do the testing and to remove non-compliant seats, seating systems, and components. ANA stated that a longer compliance time is needed to do the required tests because it will not be able to accomplish them within two years. AAPA, ANA, and China Airlines commented that the NPRM would require operators to take actions that are normally beyond their responsibility and competence. China Airlines added that the NPRM ignores the economic and operational burden that will be faced by air carriers. ANA argued that air carriers are not experts in seat design and indicated that any seat testing would have to be performed by a seat vendor or public test facility.

AAPA, China Airlines, JTA, and Thai Airways requested that the compliance time of 2 years specified in paragraph (g) of the NPRM for determining compliance with FAA regulations (testing) be extended to 5 years. The commenters stated that it is the responsibility of the primary design and certificating authority (the JCAB) with the support of Koito, in collaboration with EASA and FAA, to develop a plan of action to ensure compliance of in-service Koito seats. The commenters added that agencies capable of performing the testing of in-service seating are limited and may not have sufficient resources to support the affected air carriers. The commenters also stated that seat providers do not necessarily have the resources or spare capacity to support requests from air carriers required to change their seats, especially within the 2-year compliance period operators have for seats that have failed the testing. JTA pointed out that, as a consequence of the problems with Koito seats, airplanes have been and are grounded. JTA stated that airlines have no suitable pragmatic solution available due to the lack of certified spares and the long lead-time of sourcing replacement seats.

AAPA, China Airlines, and JTA also requested that we extend the 6-year compliance time for removing non-compliant seating systems (specified in paragraph (g)(3) of the NPRM) to 15 years. AAPA, China Airlines, and JTA questioned the safety analysis used by the FAA to establish the NPRM compliance time. JTA requested we consider that, based on a new finding of the JCAB and 16g test results stored in Koito computers, it can be concluded that even non-compliant seats still offer a high level of protection. JTA also asked that we consider there is no justification to assume this potential non-compliance will result in an increase of fatalities and noted there have been no reported seat failures that resulted in fatalities. JTA also stated that there are no historical data to support that the safety analysis takes into account the potential of seat failures resulting from high-level turbulence events.

AAPA, AEA, China Airlines, and JTA requested that we reconsider the compliance times based on a revised catastrophe rate and stated that using an accident rate of $0.15 \cdot 10^{-7}$ is a more realistic base for the safety analysis. AEA added that the affected seats would have a reduction in performance of 10% compared to the certification requirement.

AEA and Thai Airways commented that the lack of certified spares and the long lead time of sourcing seats make the replacement of seats difficult and asked for a longer compliance time to perform seat testing and seat replacement. AEA noted that a 2-year compliance time would ground airplanes. Thai Airways requested that the compliance time of 2 years specified in the NPRM be extended to 5 years. Thai Airways noted that there are a large number of seats in-service, and FAA and EASA test facilities do not currently exist. Thai Airways stated that replacement seats are not interchangeable because they are customized for items such as in-flight entertainment.

Boeing requested that the 2-year compliance time be extended to 5 years. Boeing stated that retrofit programs take at least 2 years to certify. Boeing also stated that all the falsified tests showed that the forward dynamic test pulses were greater than 14g. Boeing noted that although not 16g, the test results indicate a level of safety higher than that of 9g-only seats.

Cathay Pacific Airways and V Australia requested that the 2-year compliance time be extended to 4 years. Cathay Pacific stated the extended compliance time would allow sufficient time to carry out seat replacement during its scheduled heavy maintenance checks. Cathay Pacific also noted it takes 18 to 24 months for a typical seat development. V Australia noted that seat acquisition programs typically take 18 to 21 months. Cathay Pacific also stated that seat suppliers might not have sufficient capacity to cope with the high demand from all the affected operators.

Copa Airlines stated it is concerned about the compliance times of the NPRM. EVA Airways, JAL, Singapore Airlines, and V Australia stated the compliance times are not feasible. Copa Airlines, EVA Airways, and JAL stated there are no step-by-step service bulletin or original equipment manufacturer (OEM) instructions and that the NPRM should include clear guidance on means of compliance, work instructions, and/or requirements for facilities to conduct the tests. Copa Airlines, EVA Airways, and Singapore Airlines stated that the high demand for replacement parts might exceed the capacity of suppliers. Copa Airlines and JAL added there is insufficient time to replace the seats if they fail the testing since a new seat program takes 18 to 24 months. V Australia also stated there is insufficient time to replace seats. Singapore Airlines added that for airlines with a large fleet having affected seats, the 2-year compliance time is not pragmatic because vendors need time to design, manufacture, and install new seats. EVA Airways and JAL also questioned the availability of test facilities. Singapore Airlines stated that the 2-year time limit to replace seats that fail the 16g and 9g tests would pose a hardship for operators.

Koito suggested that we add explicit wording to paragraph (g) of the NPRM that would allow airlines to start their testing plan with a static performance test according to "14 CFR 25.562(b)(3)(ii) and (iii)" within 2 years (to get approval for seats to remain in service for 6 years) and continue it later with a dynamic testing according to sections 25.562(b)(2) and (c)(7) of the Federal Aviation Regulations (14 CFR 25.562(b)(2) and (c)(7)) within 6 years. Koito stated it understands that the FAA considers this phased testing structure as an acceptable testing plan, but also understands that this flexibility is important to Koito's customers.

We acknowledge that the compliance times specified in the NPRM could be

misinterpreted. We also acknowledge that air carriers are not experts in seat design and that testing most likely would be done by the seat manufacturer or at a test facility.

We have revised paragraphs (g), (g)(1), (g)(2), (g)(3), and (g)(4) of this AD to clarify the compliance times by removing the 2-year compliance time that was specified in paragraph (g) of the NPRM and including the applicable compliance times for the determination and removal in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD. Paragraph (g)(3) of this AD allows 6 years for the determination for certain seating systems specified in that paragraph. Paragraph (g)(4) of this AD allows three years for the determination for components specified in that paragraph. It was not our intent to require the determinations specified in paragraphs (g)(3) and (g)(4) of this AD within the 2-year compliance time.

We have also revised paragraph (g)(2) of this AD and added paragraph (h) of this AD to clarify the actions and compliance times for seating systems approved under TSO–C127a that are shown to be compliant with sections 25.562(b)(2) and 25.562(c)(7) of the Federal Aviation Regulations (14 CFR 25.562(b)(2) and 14 CFR 25.562(c)(7)), but are shown to exhibit sharp or injurious surfaces. Instead of removing non-compliant seating systems, operators may determine if the seating systems are compliant with sections 25.561(b)(3)(ii) and 25.561(b)(3)(iii) of the Federal Aviation Regulations (14 CFR 25.561(b)(3)(ii) and 14 CFR 25.561(b)(3)(iii)) and do not exhibit sharp or injurious surfaces. The removal of seating systems within the initial 2-year compliance time will only be required in the event that the seat model is not capable of withstanding the minimum static forward and side loads. We have not extended any other compliance times specified in this AD.

However, under the provisions of paragraph (l) of this AD, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety.

In regard to one commenter's justification for extending the compliance time, we do not agree with the suggestion that there is evidence the level of safety offered by Koito seats is only 10% below the applicable certification requirements. The FAA risk assessment does not assume 100% failure in the event of a survivable emergency landing and post-emergency landing fire, and includes both worldwide and U.S. fleet accident rates. Seats that do not pass the static requirements pose a significant airworthiness risk in the event of an accident and also in the event of high-turbulence loads. Seats, seating systems, and components that fail to meet the requirements specified in this AD must be removed; this AD does not require replacement of seats, seating systems, and components.

In regard to the Koito data, we have reviewed the data available to us and have determined this AD is necessary to address the identified unsafe condition. As previously stated in the NPRM section "The Role of the Airframe Manufacturers (Airbus and Boeing) in Helping Airlines Establish the Status of Their Seats," it will take cooperation among the airlines, the seat manufacturer, and the authorities to minimize the effects of this AD.

**Request To Revise Compliance Times for Removal of Seats and Seating Systems With Sharp or Injurious Surfaces**

Several commenters requested that we revise the compliance times for removal of seats and seating systems that have sharp or injurious surfaces (specified in paragraph (g)(4) of the NPRM). ANA requested clarification of the sharp edge issue or limitation for use (TSO–C127 & TSO–C127a). ANA stated that in the case where the static test is performed without the sharp edge as the first confirmation test, it will be able to use the seat for 6 years. However, ANA stated that in case it performs the 16g test as the first confirmation test and finds sharp edges, the seat must be removed within 2 years. Based on the above, ANA considered that the current AD description has an inconsistency.

JAL stated that the NPRM requires that determination of compliance or removal of the non-compliant seats against the sharp or injurious surfaces criteria be accomplished within 2 years after the effective date of the AD for the seats approved under TSO–C127a. However, JAL suggested that since the compliance time for the dynamic testing requirements in section 25.562 of the Federal Aviation Regulations (14 CFR 25.562) would be 6 years once the seats have passed the static testing requirements in section 25.561 of the Federal Aviation Regulations (14 CFR 25.561), the compliance time to determine if there are sharp or injurious surfaces in dynamic testing should be 6 years for consistency with the dynamic testing.

JAL also stated the NPRM does not specify the requirements and method of compliance for the sharp or injurious surfaces. Accordingly, JAL requested that the FAA clarify those requirements and methods by specifying the applicable section(s) of the regulation(s) and/or providing clear guidance information.

We agree that the compliance time for removing seats and seating systems that have sharp or injurious surfaces should be revised. We have removed paragraph (g)(4) of the NPRM and added the determination of sharp or injurious surfaces to the actions specified in paragraphs (g)(1), (g)(2), (g)(3), and (h)(2) of this AD, as discussed previously. The compliance times in this AD are based on the relative risk to safety resulting from non-compliance with the different standards; it is acceptable that the sharp edge determination be correlated with the particular type of test (static or dynamic) being performed. Thus, we agree that both assessments should have the same compliance time.

As noted in the NPRM, the sharp edge determination can be made from photographic evidence of the original Koito tests. In addition, as noted above, the FAA will accept the determination of an FAA designee who witnessed the test(s).

**Request To Revise Compliance Times for Removing Non-Compliant Seats, Seating Systems, and Components**

Two commenters requested that we revise the compliance times for removing seats, seating systems, and components that are not compliant. ANA requested that if structural failure is found, then the compliance time for the required removal should be counted from the test confirmation date. JAL requested that the FAA consider revising the commencement date of the compliance time for removing seats, seating systems, and components that are not compliant from "the effective date of the AD" to "the date when the non-compliance is determined."

We disagree. The commenters provide no technical justification for revising the compliance time for removal. Operators must comply with the actions in this AD within the compliance times specified in this AD in order to address the identified unsafe condition. However, under the provisions of paragraph (l) of this AD, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not revised this AD in this regard.

**Request To Be Excluded From the Requirements of the NPRM**

ANA also asked to be excluded from the requirements of the NPRM by providing a plan to replace the seats within 10 years or sell the airplanes within 4 to 5 years.

We disagree. The commenter did not provide justification for its request. As stated previously, operators must comply with the actions in this AD within the compliance times specified in this AD in order to address the identified unsafe condition. However, under the provisions of paragraph (l) of this AD, we will consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that the new AMOC would provide an acceptable level of safety. We have not revised this AD in this regard.

**Request To Clarify the 2-, 3-, and 6-Year Compliance Times**

Sami Kazi requested that we clarify whether the 2-, 3-, and 6- year compliance time requirements start after the 2-year compliance time specified in paragraph (g) of the NPRM. Sami Kazi stated that "For example if the AD is released on January 1, 2011 then the compliance findings must be completed by Dec. 31, 2012. Then 2, 3 or 6 years time periods of 'Table—Summary of Proposed Actions and Requirements' start after Dec. 31, 2012."

We agree to provide the following clarification of the compliance times. The compliance times in this AD for removing non-compliant seats, seating systems, and components do not start on the date of the compliance findings. All compliance times in this AD are measured from the effective date of the AD. For example, if an AD has a compliance time of "within 2 years after the effective date of this AD" and the AD has an effective date of July 1, 2011, the deadline for compliance for actions required within 2 years is July 1, 2013.

**Request To Change Paragraphs (g)(1) and (g)(2) of the NPRM**

Boeing requested that paragraphs (g)(1) and (g)(2) of the NPRM be revised to ensure that TSO–C39b and TSO–C39c seats installed on airplanes having 14 CFR 25.562 as their certification basis are tested to the 14 CFR 25.562 regulations.

We disagree. We acknowledge that TSO–C39b and TSO–C39c seats that are installed on airplanes having 14 CFR 25.562 as their certification basis should be tested to the 14 CFR 25.562 regulations. However, we have not revised this AD in this regard at this time. Revising these actions would require the issuance of a supplemental NPRM instead of a final rule. To delay this action would be inappropriate, since we have determined that an unsafe condition exists and that the actions required by this AD must be conducted to ensure continued safety. We might consider further rulemaking to address this issue.

**Request for Harmonization of Remaining In-Service Time Between FAA NPRM and EASA PAD**

AAPA, China Airlines, EVA Airways, JTA, Singapore Airlines, and Thai Airways requested that we harmonize with EASA on the remaining time in-service for Koito seats. AAPA and China Airlines stated that EASA and FAA are widely recognized by national airworthiness authorities as leading regulatory authorities, especially in the areas of safety, type certification, and design. AAPA and China Airlines added that it is also well understood that the FAA's and EASA's jurisdiction covers only those air carriers operating aircraft on the U.S. Register and in the 27 countries in the European Union, respectively. AAPA, China Airlines, and JTA explained that it is common practice for airworthiness authorities to adopt either the EASA or FAA airworthiness directive; however, on implementing an AD, some regulators elect to apply an FAA AD to the Boeing fleet and the corresponding EASA AD to the Airbus fleet. AAPA, China Airlines, and JTA concluded that consequently, since there is a lack of harmonization between the FAA and the EASA proposed ADs, the end result will be a mixed standard fleet.

AAPA, China Airlines, JTA, and Thai Airways noted that, unlike the FAA's NPRM, the equivalent EASA PAD 10–101 will include a 10-year maximum limit on continued service of in-service seats, even after air carriers have successfully passed all test requirements. EVA Airlines stated that in the FAA NPRM, the seats may remain in service if they meet amendment level 25–64 of sections 25.562(b)(2) and (c)(7) of the Federal Aviation Regulations (14 CFR 25.562(b)(2) and (c)(7)). AAPA, China Airlines, and JTA argued that this difference is not driven by safety and is an unjustified cost burden. AAPA and China Airlines, and EVA Airways and JTA urged the FAA to ask EASA to remove this 10-year requirement to ensure harmonization.

Singapore Airlines requested that we recommend to EASA to allow seats to continue operation without limitation if they pass the confidence tests—similar to the FAA.

JCAB noted that harmonization efforts may be made to avoid possible confusion among authorities and operators of the countries and regions outside the U.S. and Europe. JCAB previously stated that it does not have any plan to issue its own AD because the FAA and EASA are in a better position to make fleet-wide risk analysis and to come up with possible fleet-wide actions.

We acknowledge the importance of harmonizing with EASA, and we have coordinated with EASA on our respective ADs. However, EASA's 10-year limiting requirement is a result of its regulatory requirements, and the FAA is not in a position to recommend changes to this. We have determined that seats, seating systems, and components that meet the FAA regulations specified in this AD do not need to be removed and, therefore, this AD does not have a 10-year limiting requirement. While harmonization is a goal, EASA is obligated to follow its own regulatory guidance. Given the age of many of the seats in service, it is arguable whether the EASA 10-year requirement will have a significant effect on airplanes affected by EASA's PAD. We have not changed this AD in this regard.

**Request for Time Extension for Spare Parts Eligibility for Installation**

Several commenters requested that we extend the time for spare parts eligibility for installation specified in paragraph (h) of the NPRM.

AAPA, China Airlines, and JTA stated that since the announcement by the JCAB of the problems associated with Koito seats, all spare parts have been deemed not approved until Koito has finalized a recertification process. Furthermore, AAPA, China Airlines, and JTA stated that Koito is not permitted to make spares available even if it has them in stock. AAPA, China Airlines, and JTA stated that, as a consequence, air carriers are under significant pressure as they are unable to adequately support in-service seats, and sourcing of parts manufacturer approval (PMA) parts is a possibility, but not widely accepted. AAPA, China Airlines, and JTA pointed out that in order to support the requirements of the AD, spare parts are essential. AAPA, China Airlines, and JTA urged the FAA, EASA, and JCAB to determine the best way forward by agreeing on an approach that offers flexibility for air carriers to source spare parts.

Continental Airlines requested that the current inventory of spare parts be allowed to remain eligible for installation without additional testing

for two years from the effective date of the AD since the requirement for replacement components places an unreasonable burden on the operators to recertify or purge current inventory of spare parts within the timeframe specified.

We disagree with extending the time for spare parts eligibility for installation specified in paragraph (i) of this AD (referred to as paragraph (h) in the NPRM). However, we did intend to allow Koito seats and seating systems as "direct" spares for the same part number seats or seating systems based on guidance in the component maintenance manual (a "direct" spare has the same part number of the part it replaces). Therefore, we have revised paragraph (i) of this AD and a new Note 11 to add this exception and definition.

We have also added new paragraph (j) to this AD to allow re-arrangement of the existing installed seats if the re-arrangement follows the same installation instructions and limitations as the original certification. In addition, we have added new paragraph (k) to this AD to clarify the parts installation requirements for components of seats and seating systems (we had included components in paragraph (h) of the NPRM).

Under the provisions of paragraph (l) of the final rule, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety.

**Request To Remove Requirement to Determine if Seats and Seating Systems Have Sharp or Injurious Surfaces**

Boeing stated many of the tests of the suspect seats were witnessed by FAA "delegates" (designated engineering representatives (DERs) or authorized representatives (ARs)); thus, the seats were already reviewed for sharp edges. Boeing also stated that even after DERs discontinued witnessing TSO tests, the photos from the tests were provided in the test report, which was provided to the installer. Boeing concluded that had any of the photos exhibited sharp edges, the AR would have questioned this and required additional data or tests in order to make the compliance finding on the installation. We infer that Boeing is requesting that we remove the requirement to determine if seats and seating systems have sharp or injurious surfaces, as specified in paragraphs (g) and (g)(4) of the NPRM.

We disagree with the request because determining if there are sharp or injurious surfaces is necessary to address the identified unsafe condition. Photographic evidence is not sufficient since often times it is not close enough and the angle can readily hide defects that are not a blatant failure. In addition, if testing was done at a lower pulse than required, the low pulse may not show a hidden defect that would have been evident at the required pulse. We have not changed this AD in this regard.

**Request To Revise Costs of Compliance**

AEA, EVA Airways, and Koito requested that we revise the Costs of Compliance section of the NPRM. AEA stated that there are significant impacts and costs involved: hundreds of million of dollars in retrofitting seats including months—possibly years—of ground time if seats cannot be sourced. Koito stated that the NPRM not only underestimates the cost of the proposed AD, but in some cases acknowledges that the cost cannot be determined. Koito noted that the FAA did not appear to consider the replacement costs for seats, seating systems, and their components that are found to be non-compliant. Koito stated that the FAA should not ignore the costs of replacing seats, seating systems, and their components that are found to be non-compliant. EVA Airways stated the NPRM specifies a cost estimate of approximately $875,000 for 40,365 passenger seats installed on airplanes in the U.S. fleet. EVA Airways added that since there is no way to know how many tests will be done and how many seats will be modified or replaced, it is very difficult to estimate the exact cost of this NPRM; however, because the cost for one dynamic test is about $20,000 to $50,000, the NPRM estimate of $875,000 is low.

We do not agree to revise the Cost of Compliance section of this AD. We have included the estimated cost of the actions required by this AD, which is applicable to the U.S. fleet. The AD requires a determination and removal of non-compliant parts, and we have included those costs. While this AD does not require replacement we recognize that operators could choose to replace non-compliant seating systems. However, we are unable to make an assessment of how many seats would be required to be replaced based on the findings of the AD. We did provide an estimated cost of replacement seats in the table "Seat Replacement Cost Estimates" in the preamble of the NPRM and this final rule in the Costs of Compliance section.

We also do not consider it appropriate to attribute the costs associated with aircraft "down time" to the AD. Normally, compliance with the AD will not necessitate any additional down time beyond that of a regularly scheduled maintenance hold. Even if additional down time is necessary for some airplanes in some cases, we do not have sufficient information to evaluate the number of airplanes that may be so affected or the amount of additional down time that may be required. Therefore, attempting to estimate such costs would be futile. We have not revised this AD in this regard.

**Request for Department of Transportation (DOT) and Office of Management and Budget (OMB) Review**

Koito requested that the NPRM be reviewed by the DOT and OMB, as required by Executive Order 12866 ("E.O. 12866") (58 FR 51735, October 4, 1993) and Department of Transportation ("DOT") Order 2100.5 (44 FR 11034, February 26, 1979). Koito stated that under DOT Order 2100.5, where a rulemaking "concerns a matter on which there is substantial public interest or controversy," it should be classified as a "significant" rulemaking and receive DOT Office of the Secretary ("OST") and Office of Management and Budget, Office of Information and Regulatory Affairs ("OMB–OIRA") review, consistent with E.O. 12866. Koito stated that under DOT Order 2100.5, the FAA may only avoid cost-benefit analysis if it determines that the cost impact of the proposal is so minimal as to not require full review.

Koito stated that the FAA did not address the possibility that the NPRM may adversely affect in a material way a sector of the economy, which would have a significant impact and require further review. Koito added that this is true especially where, as in this case, the number of aircraft and airlines are potentially large, and where the direct and indirect effects, including any inadvertent effect on competition due to differences in approach in the AD requirements of EASA and the FAA, are unknown or not taken fully into account.

Koito noted that the FAA has witnessed very substantial public interest and controversy, not only in the comments filed to date, but in two widely attended public meetings in Cologne, Germany, and Singapore. Koito concluded that under these circumstances, it would appear appropriate to categorize this rulemaking as significant and in need of DOT OST and OMB–OIRA review.

China Airlines urged the FAA to recognize that the problem is not limited to U.S.-registered carriers and any AD will have global ramifications.

We do not agree that this AD requires a review by the DOT OST and OMB–

OIRA because we have determined that this AD is not a 'significant' rulemaking. ADs in general do not require an OMB review. However, when the cost of an AD exceeds $100 million and, therefore, is economically significant, we do coordinate the AD in accordance with all applicable DOT and OMB requirements. For the purposes of these requirements, the costs of an AD are based on the U.S. domestic fleet. For the purposes of the requirements, this AD has a total cost for the U.S. fleet of $875,000 and thus is not economically significant. In addition, ADs correct identified unsafe conditions, rather than raise the level of safety and cannot be assessed in terms of benefits balancing costs, as would be the case for amendments to the airworthiness standards. This AD does not have an annual effect on the U.S. economy of $100 million or more nor does it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities; it does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; it does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and it does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principals set forth in E.O. 12866.

We do recognize this AD could affect the non-U.S.-registered fleet if mandated by airworthiness authorities of other countries. However, this AD does not directly impact non-U.S. operators and, therefore, the cost review is not required for the non-U.S.-registered fleet. We have not changed this AD in this regard.

**Request To Provide Guidance on Testing in General and Seat Cushion Testing, Including Allowing the Use of New-Build Test Articles**

Airbus, AEA, ANA, Continental, JAL, JCAB, and Singapore Airlines requested that we provide guidance on testing seat cushions. Airbus requested that the NPRM define test pass/fail criteria and provide guidance on how the seat cushion could be tested per section 25.853(c) of the Federal Aviation Regulations (14 CFR 25.853(c)). Airbus stated its concern that it is impossible to prepare a test article per Appendix F of part 25 of the Federal Aviation Regulations (14 CFR part 25) without gluing parts of the cushion. Airbus concluded that an in-service test cushion is likely to have degraded flammability characteristics and, thus, is not able to pass requirement criteria.

AEA and ANA stated that the flammability test of cushions cannot be accomplished by using a cushion removed from an in-service seat and added that there are no test criteria for the use of used cushions. AEA requested that we provide a practical means to allow operators and type certificate holders to conform and procure foam test samples. AEA added that an operator should be allowed to deviate from the test criteria. ANA also added that testing is not feasible because it cannot obtain the correct results due to effects of the material aging and could result in new cushions (made per Koito drawings) being used for the test.

Continental requested that we work with the JCAB and Koito to determine the specific part numbers or foam compositions in question that led to this requirement being applied across all seat models. Continental stated that the NPRM should identify the flammability concerns by seat model and only those models with questionable oil burn data should be included in the NPRM.

JAL stated that the used cushions (cushions returned from service) should not be used for the testing campaign and newly fabricated seat cushions that conform to their original TSO design should be used instead for the following reasons:

- Used cushions do not represent the new ones due to contamination and/or deterioration and/or compression while in service;
- Cushions vary in condition;
- Due to its complexities of constructions and natures of used materials, it may be impossible to fabricate the required quantity of consistent test samples by using an actual cushion (by "cut and bond" method); and
- Since the condition of each used cushion could be different and no clear criterion for representative samples has been specified, conformity determination of each cushion for testing cannot be accomplished.

JCAB stated that the burden on affected operators should be minimized because operators are not expected to have in-depth technical knowledge about certification of seats or seating systems. JCAB noted that it is extremely important to have technical support from the airplane manufacturer. JCAB also stated that one of its efforts is to advise and supervise Koito in conducting re-testing of in-service models. JCAB expressed its firm belief that the result of the re-testing of in-service seat models by Koito is technically acceptable and should be fully utilized by the affected operators in showing compliance with the requirements of the NPRM.

NCA stated that the results of the tests currently underway by Koito should be considered valid because the test is being done under JCAB supervision and is in accordance with FAA requirements.

JCAB said that without data derived from re-testing, operators would have difficulty certifying seats or seating systems and completing all necessary re-testing within the 2-year compliance time, which could result in operators needing to ground airplanes from which seats are removed for re-testing. JCAB also stated that the use of in-service seats for re-testing is not technically fair, since the requirements cited in the NPRM are for newly produced test articles. JCAB added that the performance of used seats is degraded and cannot be at the same level as newly produced test articles. JCAB also stated that even if the test results are good, there may be no seats to re-install on the aircraft from which the tested seats were removed because after the testing, the seats may be deformed.

JCAB stated the proposed test for flammability is too stringent and needs improvements, including adding background information. JCAB requested that we provide more clarification on how the requirements of the NPRM can be met so as to make the process more efficient and effective. JCAB stated that it is necessary to have guidance on how the number of tests can be minimized. JCAB also questioned if, for seats with TSO–C39a approvals, it would not be necessary to do the flammability test that was introduced in TSO–C39b.

Singapore Airlines stated that we need to provide better clarity of test instructions, such as approval of test planes, if there is a need for authorities to be present during testing and to accept test results. Singapore Airlines recommended that the FAA and EASA set up a mechanism for airlines to work with EASA or the FAA through the operators' local civil aviation authorities for approving a test plan, witnessing, and reviewing test results to testify compliance to the FAA NPRM and EASA PAD.

Singapore Airlines stated that in-service seat cushions could be contaminated and are therefore not representative of initial flammability certification conditions. The commenter recommended that new test cushion coupons that are built according to the approved drawings for testing be used.

AEA, AAPA, China Airlines, Continental, JCAB, Singapore Airlines, and Thai Airways requested that we allow data from new-build test articles to be used.

AEA and Continental stated that the JCAB determined that metallic parts were not affected by the discrepancies with Koito seats, and therefore the dynamic/static tests performed on new seats that were produced in accordance with the production drawing should also be accepted. AAPA, China Airlines, JCAB, Singapore Airlines, and Thai Airways stated that no problems have been identified related to the metallic parts provided by suppliers and used in the construction of Koito seats. Several commenters also noted that the results of tear-down inspections have demonstrated that there were no significant differences. Thai Airways also stated that the JCAB has been able to confirm all production drawings were retained by Koito and checked for conformity and all design changes made to each in-service seat model have been identified, checked, and analyzed.

Thai Airways stated that the FAA, EASA, and JCAB should update all data for seat testing results together in order to initiate clear and concise instructions and to support operators in decreasing the number of applicable seat part number testing to ensure the seat integrity of in-service seats.

Koito respectfully requested that its testing efforts and results be effectively reflected in the AD. Koito stated this would facilitate and expedite compliance by airline operators with the AD requirements, without compromising safety.

We agree to provide guidance on seat cushion testing. Evaluation of the Koito oil burner test has determined that the facility did not comply with the requirements of Appendix F, part II, of part 25 of the Federal Aviation Regulations (14 CFR part 25). Although other civil airworthiness authorities are not required to follow U.S. regulations, the flammability rule affects U.S. operators and was developed based on survivable accidents in which there was loss of life. The retrofit for all transport category airplanes operating under parts 121 and 135 of the Federal Aviation Regulations (14 CFR 121 and 14 CFR 135) required fire-blocked seat cushions in accordance with this flammability rule. When TSO–C39b was issued, seats and berths approved prior to the issuance of the TSO were allowed to be manufactured under the provisions of their original approval. However, a specific exception was identified. This exception was that the seat cushions must comply with section 25.853 of the Federal Aviation Regulations (14 CFR 25.853), including the requirements of section 25.853(c) of the Federal Aviation Regulations (14 CFR 25.853(c)), and Appendix F, part II, of part 25 of the Federal Aviation Regulations (14 CFR part 25). The retrofit of the entire U.S. fleet was accomplished in 3 years.

We have added Notes 3 through 10 to this AD to provide some guidance on testing. The guidance includes allowing for new-build test articles (with in-service article conformity), test plans, and test reports, which must be presented to the FAA for approval. Test data from new-build test articles can be used to demonstrate compliance to the static requirements of the AD. Test data from new-build test articles can also be used for the flammability requirements in combination with conformity of in-service seat cushions. Any difficulties encountered with test articles and resultant interpretations can be discussed with the FAA. Consideration will be given to aging effects on test results.

**Request To Allow Newly Manufactured Seats Be Used as Representative In-Service Seat**

AEA, ANA, Continental, EVA Airways, JAL, Koito, and V Australia requested that newly manufactured seats produced in accordance with Koito drawings be used as a representative case of in-service seats.

JAL stated that use of newly produced seats should be accepted for testing. JAL stated that, in its presentation in the Singapore meeting, JCAB confirmed the results of the tear-down inspection; the results indicated that using seats that conformed to the production drawings would have no significant differences that could impact the testing. Furthermore, JAL stated that conformity determination of each seat for testing cannot be accomplished since the condition of each seat in service could be different.

We partially agree with the commenters. We have added Note 4 and Note 8 to this AD to clarify we will allow the test of new-build test articles in lieu of in-service seats for the static requirements in section 25.561 of the Federal Aviation Regulation (14 CFR 25.561). However, for the dynamic requirements in section 25.562 of the Federal Aviation Regulations (14 CFR 25.562), the in-service seats will still be required to be tested, as non-conformities in production cannot be adequately represented.

Also, we cannot accept all Koito data obtained under JCAB oversight because of several factors including the fact that the maximum weight of all the seats in a group was not tested. In addition, the results of the re-testing of seat cushions for flammability at the Koito laboratory are invalid due to non-compliance of the test facility.

**Request for Service Information**

Copa Airlines, EVA Airways, and JAL stated there are no step-by-step service bulletin or OEM instructions and that the NPRM should include clear guidance on means of compliance, work instructions, and/or requirements for facilities to conduct the tests.

NCA requested that a service bulletin be issued, and that the AD should refer to the service bulletin. NCA stated that operators are not in a position to take responsibility for the manufacturer and that Koito should issue a service bulletin. China Airlines stated that for "regional airworthiness authorities" to provide effective oversight, comprehensive accomplishment instructions should be provided instead of the high-level requirements in the NPRM.

We do not agree that waiting for a service bulletin to be issued is appropriate. There are many entities in industry that are able to determine if the seats comply with the AD. An operator may outsource this determination. We do not consider that delaying this action until after the release of a manufacturer's service bulletin is warranted. To delay this action would be inappropriate, since we have determined that an unsafe condition exists and the actions required by this AD must be performed to ensure continued safety. We have not revised this AD in this regard.

**Request To Consider Data Found in Koito Computers**

JCAB requested that we consider the data found in Koito computers. JCAB added that raw data, mainly dynamic tests, are stored in computers of Koito and because those data are not believed to be falsified, with technical analysis those data may be used to show compliance with the proposed requirements of the NPRM, if certain conditions are met.

We do not agree that the data found in Koito computers should be used to show compliance with this AD because we cannot confirm the validity of the data at this time. However, if additional data are provided that confirms the validity of the data, we will consider the data. We have not revised this AD in this regard.

**Request To Identify Seats by Grouping or Family**

AAPA, ANA, China Airlines, Eva Airways, JAL, JTA, NCA, and Singapore Airlines requested that we allow identifying seats by grouping or family. Several commenters questioned who will do the identification. EVA Airways indicated that operators are not capable of identifying seat models by groups to enable testing by similarity to reduce cost, and requested that EASA and the FAA work with Airbus and Boeing to group seats. Thai Airways stated that the number of sampling seats in each applicable part number to be selected for testing has not been defined.

AAPA, China Airlines, and JTA requested that we modify the NPRM to clearly indicate that a collective approach by airlines is an acceptable approach to responding to the requirements of the AD. AAPA stated that such an approach would allow air carriers in coordination with airframe manufacturers to carry out a sampling of seat family/models and the resultant data would then be considered as acceptable justification to demonstrate compliance to the NPRM.

JAL stated that since the airlines/operators cannot accomplish their tasks without technical support from the airplane manufacturers, especially in cases where a seat family extends between operators and between the manufacturers, it requests that the FAA clearly define the airplane manufacturers' roles. Furthermore, JAL stated that if the FAA expects Koito to take any roles, those roles should also be specified in the NPRM. JCAB noted that it is in a position to assist operators in complying with the NPRM.

We agree with the commenters and confirm that seat grouping will be allowed to show compliance with the AD; work is ongoing by the type certificate holders to define seat groups. However, we have not revised this AD to specify how and who should do the work. It is expected that the type certificate holders or suitable qualified organizations can assist in the clustering of seat models. Seat model grouping is not essential for compliance with the AD, but is recognized by FAA as a means to reduce the economic burden.

**Request To Explain Conformity Inspection**

AEA, Airbus, ANA, and EVA Air requested we provide guidance on how to perform a conformity inspection of the seats.

We disagree with revising this AD to include instructions on conformity inspections because there are numerous ways to accomplish this, and we want to provide flexibility for operators. This AD requires the determination for compliance with certain FAA regulations of seats, seating systems, and components in accordance with a method approved by the FAA. We will provide guidance during the FAA review and approval of the test plans submitted. Changes to the design might have occurred between when the product was accepted for a TSO and when production started. A simple instruction to establish conformity through comparison to the component maintenance manual is not a sufficient way for operators to determine airworthiness. We have not revised this AD in this regard.

**Request That the TSO Certification Level be Commensurate With the Testing Requirement at the Time of the Original Aircraft Type Certification**

AAPA, AEA, ANA, China Airlines, Continental Airlines, JAL, JTA, JCAB, Koito, and Boeing requested that the TSO certification level be commensurate with the testing requirement at the time of the original aircraft type certification.

AEA stated that operators should only be obliged to comply with the original type certification basis of the aircraft. AEA also stated that testing the seats to the latest or later requirements cannot be justified and would increase the risk of failures dramatically as the original seat design would not allow for this.

JAL stated that the NPRM requires the airlines/operators to determine compliance with the latest static structural requirements under section 25.561(b) of the Federal Aviation Regulations (14 CFR 25.561(b)) at Amendment 25–64. However, JAL and AEA stated that the side load factor defined in section 25.561(b)(3)(iii) of the Federal Aviation Regulations (14 CFR 25.561(b)(3)(iii)) should be consistent with the airplane certification basis because "new" seats were tested to 4g requirements at Amendment 25–64 of that regulation, whereas the "old" seats were tested to 1.5g requirements at Amendment 25–23 or 25–0 of that regulation in the course of original TSO design approvals.

JCAB questioned whether it correctly understands that re-tests can be conducted in accordance with the certification basis of airplanes/seats. JCAB noted that for older airplanes/seats, the side load requirement in static seats is 1.5g, while the newer requirement is 3g/4g. JCAB also noted there is a -2g pulse shape introduced in TSO–C127a.

Koito stated that a more appropriate level of compliance for the requirements of the NPRM would be to the certification basis of the aircraft or a higher amendment level, whichever an affected operator chooses. Koito noted that it took the FAA 17 years to finalize the regulations at Amendment 25–64 (to address retrofitting), in large part because of technical difficulties in certifying seats to the 16g standard, which were more sophisticated and complex than 9g seats. Koito pointed out that when the regulations at Amendment 121–315 were adopted, it required full compliance only for new production airplane models. Therefore, Koito submits that requiring compliance to the most recent amendment levels is not supported and is inconsistent with the FAA's approach to addressing retrofitting aircraft to the higher standards at Amendment 25–64 of the regulations. Alternatively, Koito stated that an airplane may have a certification basis that does not include section 25.562 of the Federal Aviation Regulations (14 CFR 25.562) and requested that the FAA relieve the requirements of sections 25.562(b)(2) and (c)(7) of the Federal Aviation Regulations (14 CFR 25.562(b)(2) and (c)(7)).

We partially agree with the commenters. We agree that certain TSO seats can be tested at the level that the TSO was issued. We have revised paragraph (g)(1) of this AD to clarify the certification basis. For TSO–C39b and TSO–C39c seats, the certification basis when determining (testing) if the seats meet section 25.561 of the Federal Aviation Regulations (14 CFR 25.561) is the certification basis of the TSO; however, for TSO–C127a seating systems, the testing remains the same.

Boeing also requested that a note be added regarding pulse shape to allow the use of the pulse shape that was acceptable at the time of TSO approval or type certification or supplemental type certification.

We disagree with Boeing's request that a note be added regarding pulse shape to allow the use of the pulse shape that was acceptable at the time of TSO approval or type certification or supplemental type certification. The current criteria for the pulse shape meets the original intent of section 25.562(b)(2) of the Federal Aviation Regulations (14 CFR 25.562(b)(2)).

**Request To Accept the Use of Koito Interface Loads Reports for the Analysis To Determine Which Seat(s) Testing is Required**

AEA requested that we accept the use of Koito interface loads reports for the

analysis to determine which seats are tested. AEA stated that if structure testing is to be conducted for showing compliance with the applicable portions of the NPRM, one method to determine the "critical" seat(s) for testing is mentioned in Appendix 3 of FAA Advisory Circular 25.562–1B, dated January 10, 2006. AEA stated that one element in this determination is taking into account the highest loaded seat leg of a seat within a "family of seats," which can be concluded from the calculated interface loads for those seats. AEA noted that since falsification involved "static, dynamic and flammability testing, as well as uncontrolled changes to production data (material and dimensional)," we accept the use of Koito Interface Loads Reports for the analysis to determine for which seat(s) testing is required.

We agree that the use of Koito interface loads reports may be acceptable for the determination of compliance to FAA regulations required by this AD. We note that the use of advisory circular material may be allowed, thus Koito analysis of interface loads may be allowed. We have added this information to Note 6 of this AD.

**Request To Use Only Lower Testing Requirement**

Several commenters requested we allow testing to be done at lower testing requirements. AEA requested that all seats that pass the 9g requirement can remain in service. AEA stated that according to the NPRM, seats with a 16g certification basis that fail the 16g test are required to carry out a 9g test, and receive a 6-year grace period if the test is passed. AEA stated that during the 16g rulemaking it was determined that the 16g rule was not made retroactive to seats that met the earlier 9g certification basis. Therefore, AEA stated that all seats that pass the 9g test have shown compliance to the minimum standard and can therefore remain in service.

ANA stated that 16g seats (TSO–C127a) may be installed on an airplane that itself does not have a 16g requirement. ANA asked that the 9g confirmation test be considered sufficient.

We disagree. This AD requires compliance with certain provisions of the TSO. If a seat is TSO–C127a then the requirements of that TSO apply. In addition the FAA's operational and airworthiness regulations do not allow a downgrade of the certification basis of airplanes to an older standard. We have not changed this AD in this regard.

Also, Boeing stated that the certification basis of various models of airplanes is different regarding the static side load case. Boeing stated that airplanes (such as Boeing Model 747–400 and 767–300 airplanes) have a certification basis lower than the standards at Amendment 25–64 of the regulations, and as such, a 1.5g side load would be appropriate.

We disagree. A seating system that is approved under TSO–C127a must also meet section 25.562 of the Federal Aviation Regulations (14 CFR 25.562), even if the airplane has a lower certification basis. We have not changed this AD in this regard.

**Request To Waive Bunsen Burner Test**

AEA requested that we waive the Bunsen burner requirement when operators elect to perform a complete re-qualification program, as mentioned under Note 1 of the NPRM. AEA stated that during the question and answer session in Cologne, it was stated that relevance of Bunsen burner test results is negligible and that absence of such test data does not lead to an unsafe condition.

We disagree. The comments made by EASA and FAA during the meeting in Cologne might need further clarification. It was not stated that compliance with section 25.853(a) of the Federal Aviation Regulations (14 CFR 25.853(a)), commonly referred to as the Bunsen burner test, has no influence on the determination of the unsafe condition. It was stated that Bunsen burner testing is not a required element of the flammability tests to show compliance to this AD. If requalification is chosen, showing compliance with all aspects of the applicable TSO is required in accordance with part 21 of the Federal Aviation Regulations (14 CFR 21). We have not changed this AD in this regard.

**Request To Clarify When Re-Installing Seats Is Allowed**

Airbus, AEA, APA, Boeing, China Airlines, JAL, JTA, Koito, and Thai Airways requested that we clarify when re-installing seats after removal or reconfiguration is allowed. Airbus requested that we allow provisions for filling the gap in the cabin following removal of seats for confidence tests (by allowing production and installation of complete seats of the same design) or allow reconfiguration of the cabin without full requalification of the seats. Koito agreed with Airbus that we should allow provisions for filling the gap. Thai Airways stated that after removing seats for testing, there are no instructions to address deviations from the aircraft configuration type certificate.

Boeing requested that we clarify the text in the "Limitations on Seats Found Not to Be Fully Compliant, but Are Safe to Remain in Service" section of the preamble of the NPRM because a couple of sentences conflict with each other. Boeing stated that one sentence would allow the use of direct spares (*i.e.,* same part number) to be re-installed in an airplane, but a different sentence specifies that any removed seat is to be destroyed. Boeing stated this would mean that no spare seat would exist, as indicated by the earlier sentence. Boeing suggested the section include "unless retained as a direct spare as noted above. The direct spares can be re-installed in any previously certified layout using that seat part number." Boeing recommended the paragraph read as follows:

> That is, unless they are shown to fully comply with the regulatory requirements, this proposed AD would restrict the installation of such seats and would require specific marking. These seats can be used as a direct spare for the same part number seat. However, any other use of such seats would be considered a new installation approval and would be required to comply with all regulations. Thus, seats not meeting all regulations could not be installed except as noted above, and if removed from an approved arrangement, would have to be destroyed or rendered unusable in some other manner acceptable to the FAA, unless retained as a direct spare as noted above. The direct spares can be re-installed in any previously certified layout using that seat part number.

Boeing stated that the additional text clarifies that the airlines can continue to re-configure their airplanes from, for example, their previously certified summer layout (with lots of economy class) to their previously certified winter layout (with less economy class) and vice-versa.

Boeing also recommended we clarify that re-configuration is acceptable and suggested adding the following text:

> As an exception, when a seat(s) is removed from an airplane for the direct purpose of testing under the context of this AD, the remaining seats can be re-pitched to fill the vacant spot. This one-time re-pitch following a test-seat removal is to follow the same installation instructions and limitations as the original certification (*e.g.,* if the original limitations allowed 32″ to 34″ pitch, the new layout shall be pitched within that range).

Boeing stated that although re-pitching is not a simple solution, removing a seat for testing without allowing for a solution produces a "hole" or unused space in the airplane. Boeing noted that the re-pitch will be equally as safe as the seats were before the removal of the test seat and, in addition, leaving a "hole" or unused space in the airplane leaves passengers without tray tables (which were seat-

back-mounted on the removed seat). Boeing further stated that the "hole" also leaves the electrical daisy-chain interrupted, which eliminates reading lights, attendant call, and in-flight entertainment (IFE) to the seat assemblies beyond the missing one.

AEA and Koito stated that the preamble of the NPRM states the seats that pass the test and remain on the airplane are "limited on how they can be used." AEA also stated that the FAA has clarified this means that seats have to remain in the currently approved configuration and cannot be changed, moved, or re-pitched. AEA noted that in order to remain competitive in today's changing market, it is essential for operators to have the ability to amend the configuration of their aircraft to suit the market needs. AEA, AAPA, and China Airlines requested that the FAA clarify the wording so that operators would be allowed to reconfigure airplanes containing Koito seats. Koito stated that it echoed the concerns raised by AEA. AEA provided the following justification:

- Seats that have passed the confidence test will have been shown to be safe.
- Certain reconfigurations may actually improve safety.
- Reconfigurations are usually supplemental type certificates (STCs); in addition, all changes (including minor) related to Koito seats are FAA-approved.
- FAA has previously stated that Koito data are approved.
- In order to provide test specimens, some operators will need to remove seats from in-service airplanes, and this will leave a large gap in these aircraft unless the remaining seats can be re-pitched.

Koito stated that preventing operators from reconfiguring seats that are part of a supplemental type certificate would be unnecessarily restrictive and would provide no safety benefit—nor would it be necessary to correct a potential unsafe condition.

JAL requested that the FAA accept the use of newly produced seats to fill in gaps left by seats removed for testing in case newly produced seats are not allowed for testing.

We agree to clarify when seats and seating systems can be installed and rearranged. We have added a new Parts Installation paragraph (paragraph (j) of this AD) to allow certain reconfigurations. We will consider allowing reconfiguration within the same installation instructions and limitations as the original certification. Operators may request approval of an AMOC in accordance with the procedures specified in paragraph (l) of this AD. We have not revised the "Limitations on Seats Found Not to Be Fully Compliant, but Are Safe to Remain in Service" section because that section of the NPRM is not restated in this final rule.

**Request To Allow Entire Seat Assemblies To Be Produced and Installed To Replace Seats That Have Been Removed for Testing**

JAL requested the FAA accept the use of newly produced seats to fill gaps left by seats removed for testing in case newly produced seats are not allowed for testing.

Boeing requested that the following be added to the "Replacement Components" paragraph in the preamble of the NPRM:

"* * * Entire seat assemblies may also be produced and installed to explicitly replace any seat removed from the fleet for testing under this AD."

Boeing stated that removing a seat for testing without allowing for a new replacement seat assembly to be produced leaves a "hole" or unused space in the airplane. Boeing stated the replacement seat will be identical, or at least representative of the one removed for testing, which achieves an identical or representative level of safety between the newly installed seat and others on the airplane.

Additionally, Boeing reported that leaving a "hole" or unused space in the airplane leaves passengers without tray tables (which were seat-back-mounted on the removed seat). Boeing noted the "hole" also leaves the electrical daisy-chain interrupted, which eliminates reading lights, attendant call, and IFE to the seat assemblies beyond the missing one.

We agree. The FAA's intent is to allow new Koito seats with the same part number to be installed to replace in-service seats used as test articles. We have revised paragraph (i) of this AD to clarify this issue by specifying that seats and seating systems may be removed from service and re-installed and that new seats and seating systems may be installed as direct spares for the same part number seats or seating systems. The new Koito seats and seating systems are subject to this AD.

**Request To Consider Minor Failure**

AEA requested that we consider what to do if there is a minor failure of the seats. AEA stated an example is a seat experiencing a 'minor' failure of a structural test. AEA stated in the case where a 9g seat is tested the NPRM implies that if it fails in any way it would require replacement in 2 years. AEA requested that a logical, safety-based approach be applied to tests and a maximum allowed grace period be granted should a failure be deemed as minor.

We disagree that there is such a thing as a 'minor' failure. Existing pass/fail criteria already include consideration of the amount of damage that is considered a failure and these criteria continue to be valid. This AD requires that a determination be made to ensure that seats, seating systems, and components are compliant with certain regulations and removed if necessary. The compliance time for removal is dependent on the failure criteria as identified in the AD. AEA stated that replacement is required; however, this AD only requires removal of seats, seating systems, and components that are non-compliant. We have not revised this AD in this regard.

**Request To Allow Alternative Actions**

Two commenters requested that we allow alternative action for "replacement." Thai Airways stated that remedial action does not exist if seats fail the test and the only recommendation is replacement. ANA requested that we allow modification to comply with the NPRM.

We do not agree. Seats, seating systems, and components that are non-compliant must be removed, as required by the AD. However, under the provisions of paragraph (l) of this AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the new methods would provide an acceptable level of safety. We have not revised this AD in this regard.

**Request To Clarify 100% Conformity Is Not Required**

AEA requested that we confirm and clarify that a 100% conformity inspection of all seats installed is not required and that based on analysis the recertification of a representative test article is acceptable. AEA stated that according to Note 1 of the NPRM, it must be determined if the seats and seating systems and their components are compliant with FAA regulations. Note 1 refers to recertification, *i.e.,* re-qualify to the TSO.

We agree to clarify this issue. We confirm that 100% conformity of the in-service fleet is not required to comply with the AD in most cases because a sampling approved by the FAA will be allowed. The AD does not require re-qualification of the seats and seating systems, which would involve showing compliance with all aspects of the applicable TSOs, such as measurement and reporting of permanent

deformations and lumbar load requirements. The AD requires a determination if the seats are compliant to the specific requirements set forth in the AD.

**Request To Clarify Guidance on Replacement Cushions**

Several commenters requested guidance on replacement cushions. AEA requested that we allow similar bottom cushions to be accepted instead of tested. AEA stated that according to paragraph (g)(2) of the NPRM, for seating systems approved under TSO–C127a, dynamic testing is limited to a 16g forward load condition; however, strict adherence to the referenced guidance of FAA Advisory Circular 25.562–1B, Appendix 3, paragraph 9 (reference paragraph (g)(5) of the NPRM) would require conducting a 14g down lumbar load test, if the original bottom cushion material (*i.e.,* foam) is not available for the manufacturing of replacement cushions. AEA stated that since it is accepted that in-service seats might not meet the 14g down lumbar load requirement, it would be unreasonable to require the showing of full compliance with this part of the regulations in case an operator is forced to replace bottom cushions because of non-compliance with the oil burner test or because spare cushions cannot be obtained.

Therefore, AEA requested that we accept similar bottom cushions with respect to stiffness and density (measured according to accepted industry standards) to show that the performance of a replacement bottom cushion is not worse than that of the in-service cushion.

ANA noted that in paragraph (g)(5) of the NPRM, the reference for the replacement is AC 25.562–1B; however, this is for a TSO–C127a seat only, and not for TSO–C39b and TSO–C39c seats. ANA requested that we revise this reference.

We agree that the requirement for replacement cushions is too restrictive for certain seating systems. We revised paragraph (g)(4) of this AD (referred to as paragraph (g)(5) in the NPRM) to clarify that the requirement is only for seat cushions affected by FAA Advisory Circular 25.562–1B, dated January 10, 2006 (*i.e.,* seat cushions replaced on airplanes required to meet section 25.562 of the Federal Aviation Regulations (14 CFR 25.562) either by their original certification basis or post-type certificate modifications). We have also clarified that compliance with section 25.562(c)(2) of the Federal Aviation Regulations (14 CFR 25.562(c)(2)), *i.e.* lumbar load, does not need to be shown.

**Request To Add Guidance on Pass/Fail Criteria**

Boeing requested that we add Note 4 after paragraph (g) of the NPRM to provide information that pass/fail criteria for cracks may be acceptable on a case-by-case basis, *i.e.,* front fitting acceptable, rear fitting not acceptable.

We disagree. This information is not necessary to comply with this AD. Guidance on acceptable damage is contained in Advisory Circular 25.562–1B. We have not changed this AD in this regard.

**Request To Add Guidance on Conformity**

Boeing requested that a note be added as follows: "If the test article consists of a seat from the fleet (or from spares), conformity should consist of matching the seat part number to that noted in the test plan, of noting the general condition of the seat, of noting revisions/modifications that have been made to the seat (typically noted on modification placards), and of verifying the date of manufacture."

We agree with the intent of the suggestion. We have added Notes 5, 6, 9, and 10 to this AD to provide guidance.

**Request To Specify Specific Cushions**

AEA requested that we specify specific cushions in paragraph (g)(5) of the NPRM. AEA requested that although not explicitly mentioned in paragraph (g)(5) of the NPRM, the FAA should limit the applicability of this paragraph to seat bottom and seat back cushions only, as these represent the majority of foams on the seats. AEA stated that legrest cushions and headrest cushions are significantly smaller when compared to bottom and back cushions. AEA added that it is nearly impossible to manufacture representative test sample sets of these small-sized cushions on in-service seats.

We agree to specify cushion types. Headrest and legrest cushions typically have much less mass than bottom and back cushions. While the requirements of section 25.853(c) of the Federal Aviation Regulations (14 CFR 25.853(c)) also apply to headrest and legrest cushions, non-compliance of these types of cushions would not have as much effect on safety as would non-compliance of the bottom and back cushions. We have determined that addressing only bottom and back cushions provides an adequate level of safety. We have revised paragraph (g)(4) of this AD to specify that seat bottom and seat back cushion assemblies must be shown to be compliant as specified in the AD.

**Requests for Harmonization of Parts Replacement**

Singapore Airlines requested that we work with EASA and the JCAB to harmonize parts replacement to facilitate Koito's production and shipment of spares to airlines. Singapore stated this is especially important to airlines that expect to continue operations with Koito seats if their seats pass the confidence tests stipulated by EASA and the FAA. Singapore stated that without JCAB's approval for Koito to produce spare seats for replacement of in-service seats for the confidence testing, airlines might end up with a "hole" in the airplane (impacting IFE systems and wiring), having to approve a new configuration, having seats destroyed during testing that cannot be re-installed, and having a commercial impact that may affect route performance and viability.

Thai Airways stated that Koito could manufacture seats and seat accessories according to FAA TSO and deliver them to the operators as spare parts. Thai Airways requested we coordinate with the JCAB to clarify and reconsider authorizing export of those seats as spare parts.

As previously stated it is the FAA's intent to allow new Koito seats with the same part number to be installed to replace in-service seats used as test articles. However, we do not have authority over the production approval of Koito spare parts. JCAB is the authority and they are aware of this issue. We have not revised this AD in this regard.

**Request To Allow Replacement of Non-Conforming Seats**

The JCAB requested that we allow the replacement of non-conforming seats. The JCAB stated that if operators chose to correct non-compliance found during the determination (testing) specified in the NPRM, the seats in question have to be modified so they fully meet all applicable requirements. The JCAB stated that there would be Koito seats that comply with the requirements of the NPRM while not meeting the full requirements under Part 25 of the Federal Aviation Regulations (14 CFR 25); and there would also be seats that failed to comply with the NPRM requirements and would require modifications to achieve compliance with the NPRM requirements. The JCAB noted that after the modifications, the latter seats are at the same level of safety as the former seats and, therefore,

should be allowed to continue operation without further actions. The JCAB argued that requiring the full compliance for the latter seats is not fair, and it may be more reasonable if operators are allowed to continue to use seats that are modified.

We disagree. This AD requires determining if the seats and seating systems and their components are unsafe, based on the failure to comply with certain key performance standards in the TSO. As clarified in Note 1 of this AD, this determination may be made by independent re-qualification of the affected TSO article that has thorough control of the design and production process. Seats and seating systems that fail the determination (tests) required in the AD will be subject to the associated limitations. Any future design change to the seats or seating systems requires full re-certification of the seats or seating systems. We have not revised this AD in this regard.

**Request To Add Guidance on Use of Redesigned Part**

Boeing requested that we add a note allowing the use of re-designed parts to be installed after test failure. Boeing stated that retrofitting an entire family of seats with a new design is perceived as a quicker path to safety and is non-punitive to airlines.

We disagree that such a note in the AD is necessary. Seats and seating systems that fail the determination (tests) required in the AD will be subject to the associated limitations. Any future design change to the seats or seating systems requires full re-certification of the seats or seating systems. We have not revised this AD in this regard.

**Request for FAA and EASA Harmonization of Replacement Parts**

ANA and JAL requested that we harmonize with EASA on replacement parts. JAL commented that the FAA NPRM requires that replacement parts meet applicable airworthiness requirements, whereas the EASA PAD requires replacement parts to be compliant with the requirements of the AD. JAL requested that the NPRM reflect compliance similar to the EASA PAD since operators might have to conduct further testing to show compliance with requirements other than flammability and injury prevention provisions. Accordingly, JAL requested that the FAA consider revising the requirements for the replacement parts so they are consistent with the ones in the EASA PAD. JAL noted that airlines/operators might have to conduct further testing to show compliance to regulations other than the flammability and injury prevention provisions. ANA stated there are differences regarding parts replacement between the FAA and EASA, and ANA requested the use of the EASA description.

We disagree. We cannot harmonize on this issue because EASA has a proposed 10-year removal date whereas the FAA does not. Since our AD allows seats, seating systems, and components that are compliant to remain on the airplane, our AD refers to the applicable airworthiness requirements for replacement parts. We have not revised this AD in this regard.

**Request To Allow Replacement of Actuators, Hydrolocks, and Other Structural Parts**

Several commenters requested that we allow the replacement of actuators, hydrolocks, and other structural parts. ANA stated that after the AD is effective, the AD requires that replacement parts comply with the requirements of the AD. ANA added that for the structural member, basically the new part is obviously much healthier than the existing one (installed on seat). ANA concluded that it is not necessary to include requirements for the spare (replacement) parts, including an actuator, a hydrolock, and so on, which are the standardized manufacturing parts.

JAL stated that it is currently proposed that only wear-out components and non-structural members may be manufactured and installed on the seats affected by the NPRM. JAL requested that we consider exempting the mechanical reclining control actuators even though they may be part of structural members. JAL stated the actuators are a type of wear-out component replaced often during maintenance. JAL added that the ones used on the Koito seats have many suppliers, their quality and performance were unlikely to be adversely affected by falsification, and the replacement of actuators improves, not degrades, the performance of existing seats.

Koito stated that the NPRM provides only for the replacement of wear-out component parts, such as food trays, arm rest covers, and non-structural members. Koito stated that this strict limitation may be disproportional as the replacement of certain parts of in-service seats can ensure appropriate safety levels while allowing the airlines to extend the use of these seats without having to replace them. Thus, Koito suggested including an explicit section in the NPRM describing possible avenues for airlines to upgrade seat performance (*e.g.,* through service bulletins and kits developed by Koito) to ensure they meet the safety requirements foreseen in the NPRM. Koito considered this would adequately ensure safety performance, while minimizing the burden on airlines.

We partially agree. We disagree with the ANA request to allow other structural parts "and so on" because ANA did not list specific parts. We agree that certain parts may be allowed. The intent of this AD is to allow Koito spares based on guidance in the component maintenance manual. Seat cushions would need to be in compliance with the AD. A seat, seating system, or component that fails the determination (tests) required in the AD is subject to the associated limitations. Any future design change (such as upgrade kit and associated Koito service bulletin) would require full re-certification of the seat.

**Request To Clarify Limitation on Seats, Seating Systems, and Components Remaining in Service**

EVA Airways commented that the NPRM contains inconsistent statements. EVA Airways stated that the NPRM reads that as of the effective date of this AD, a seat, seating system, or component may be re-installed on the airplane from which it was originally removed, provided it is removed from service within the applicable compliance time specified in this AD. EVA Airways also stated that the NPRM specifies these seats can be used as direct spares for the same part number seats. We infer that the commenter is requesting clarification of the limitations on seats, seating systems, and components remaining in service.

We agree to provide clarification. As specified in paragraphs (i) and (k) of this AD, a seat, seating system, or component that is removed to conduct testing can be replaced with a newly built part of the same part number or a used part of the same part number. All seats, seating systems, and components, whether new or used, must be in compliance with the AD within the appropriate compliance times of the AD.

**Request To Revise Paragraph (h) of the NPRM**

AEA requested that we revise paragraph (h) of the NPRM. AEA commented that paragraph (h) of the NPRM is very restrictive to operators who cannot obtain spare parts. ANA stated that it did not have spare seats based on the fact that there are many seat part numbers. Koito agreed with AEA that this provision is very restrictive and stated that such a significant limitation would prevent reconfiguration of airplanes containing

Koito seats. AEA requested that the wording of paragraph (h) of the NPRM be amended to allow non-compliant seats and their components to be used as direct spares for the same part number seat or component as follows:

> Seats and components that successfully complete the relevant requirements of paragraph (g) of this AD and are permitted to remain in service for the defined length of time, are limited in how they can be used, unless they are shown to fully comply with the applicable airworthiness requirements. Non-compliant seats and their components that are removed from service are not eligible for installation on another aeroplane or by another operator except as a direct spare for the same part number seat or component.

We do not agree to allow installation of seats, seating systems, and components as direct spares between other airlines and authorities. The intent of paragraphs (i) and (k) of this AD (referred to as paragraph (h) in the NPRM) is to limit the introduction of known bad parts into the worldwide fleet. Non-compliant seats, seating systems, and components are subject to the limitations of the AD. However, we have revised paragraphs (i) and (k) of this AD to allow installation of parts as direct spares on another airplane for a given operator, provided the operator complies with the requirements of the AD.

**Request To Revise "Data the FAA Will Accept * * *" Section of the NPRM**

Boeing requested that we revise the "Data the FAA Will Accept to Demonstrate Compliance with the Proposed AD" section of the preamble of the NPRM. Boeing suggested that we replace the wording "* * * As noted above, tests conducted as part of the JCAB investigation may be acceptable if the conformity of the seats in service can be verified" with the wording "* * * Tests conducted as part of the JCAB investigation are acceptable if the seat model in question is part of the family of the tested seat and if the tested seat included the highest loaded leg * * *" Boeing stated that the JCAB reported that falsification of data did not relate to the structural components of the seat and, as such, testing of test articles that are manufactured to the level of drawings at the time of production can establish a level of safety for the fleet.

We disagree with revising the wording because all tests might not be acceptable. Tests conducted as part of the JCAB investigation may be acceptable if the conformity of the seats in service can be verified. Operators may include not only the highest loaded leg but also such things as the rationale for why the seat model is the critical seat in the determined group/cluster in any proposed test plan. That section of the NPRM is not restated in the final rule. We have not revised this AD in this regard.

**Request To Clarify Status and Validity of TSO and Tagging**

JAL, Continental, and Koito requested clarification on the validity of TSO design approvals and tagging. JAL requested the status and validity of TSO design approvals of Koito seats and PMAs as replacement parts be unchanged by the AD.

JAL requested that the FAA define the disposition of TSOs/PMAs when operators decide to acquire new seat cushions.

Continental stated the NPRM should include a provision to allow the TSO to remain intact for any seats which are shown to meet the original TSO requirements or for any seats that are brought into full compliance.

Koito indicated the NPRM proposes to require modification of existing TSO tags prior to reinstallation to indicate non-compliance with the TSO, the AD number, and applicable removal date; however, the FAA has not proposed to revoke or suspend the TSOs. Koito requested the NPRM only require that a tag be added to the TSO marking that specifies the number of the AD, identifies the AD paragraphs it is in compliance with, and a removal date, if applicable. Koito concluded that only seats that do not comply with any requirements of the NPRM should have all TSO markings obliterated.

We agree to provide clarification. This AD does not address action against the manufacturer and we have not revoked the letter of design authorization for the TSO. However, none of the TSO markings on existing articles produced under TSO authorizations specified in this AD are considered valid because they were obtained in violation of the TSO process. This includes falsified Bunsen burner tests, oil burner tests, static tests, dynamic tests, and material certificates. If a seat model is fully re-qualified by the TSO holder, a seat may be entitled to a new TSO marking, with a new date, but the existing marking cannot be validated after the fact. The JCAB stated that the models identified in the AD have data that was either falsified or is suspected to have been falsified. The obliteration of the TSO identification ('TSO–XXX') is therefore required for all seats and seating systems affected by this AD.

The operator/owner may elect to show full compliance to the TSO as indicated by Note 1 of this AD (Note 1 indicates that it is possible for operators to redesign if they have a failure provided they re-qualify the affected TSO article through a thorough control of the design and production process). This permits the seat to remain in service in compliance with the AD but does not negate the fact that the TSO authorization was obtained fraudulently.

Acquisition or use of new seat cushions that comply with section 25.853 of the Federal Aviation Regulations (14 CFR 25.853) is one way to replace affected seat cushions. Also, use of third-party PMA seat cushions that are obtained through test and computation is a way to do this. PMA holders with compliance data may wish to request approval for an alternative method of compliance with this AD. PMA seat cushions that are obtained through "identicality" might not comply with the AD as the Koito data to which the PMA is identical might have been falsified. This AD does not address third-party PMA parts, except as replacement parts, which are subject to the requirements specified in "Parts Installation—Components of Seats and Seating Systems" in paragraph (k) of this AD. We might consider further rulemaking to address PMA parts obtained through identicality.

**Request To Add Guidance on Dynamic Testing**

Boeing requested that we add a note for paragraphs (g)(1), (g)(2), and (g)(3) of the NPRM to provide guidance on dynamic testing, including details on maximum seat weight for family, ballast, surrogate parts in a non-load path, and the use of the highest loaded leg.

We acknowledge that this sort of information needs to be addressed; however, it is appropriate for a test plan. There are current FAA guidelines that address these items that are found in FAA AC 25.562–1B. This level of detail is not necessary for this AD. The AD requires that operators determine compliance in accordance with a method approved by the FAA and each test plan may vary. We have not revised this AD in this regard.

**Request for Compliance With FAA Statement of Compliance With Airworthiness Standards Form 8100–9**

Aeroflot submitted an e-mail in which the operator requested Koito fill out an FAA Statement of Compliance with Airworthiness Standards Form 8100–9. Koito responded to Aeroflot that Koito was not able to issue the form and has never issued this form to date. Aeroflot stated it needed approval of repairs and

spare parts. We infer Aeroflot is requesting how to show compliance with the requirements of the AD for a specific repair for Model ARS–417 and ARS–418 seats.

We disagree with providing specific repair information. U.S. operators must do the actions in this AD in accordance with a method approved by the FAA. Non-U.S. operators are not subject to this AD unless it is mandated by their respective airworthiness authorities. We have not revised this AD in this regard.

**Clarification of Terminology**

In paragraph (h) of the NPRM we specified that parts are not eligible for installation "by another airline or any other aviation entity." We have removed the sentence containing that phrase in paragraphs (i) and (k) of this AD (which correspond with paragraph (h) of the NPRM). Instead, we have added the phrase "on airplanes operated by the same operator" to the sentences in paragraphs (i)(1) and (k)(1) of this AD.

We also revised the description of the unsafe condition in the Summary of this AD to match the description of the unsafe condition in paragraph (e) of this AD.

**Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

**Costs of Compliance**

We estimate that this AD affects 40,365 passenger seats installed on airplanes in the U.S. fleet. There are 278 airplanes of U.S. registry. The average labor rate is $85 per work-hour.

The estimated cost to determine if the affected seats and seating systems and their components are in compliance (*i.e.,* estimate the cost of static, dynamic and flammability testing, labor) is approximately $100,000 for the U.S. fleet. The estimated cost of the consumed article such as the seat row and materials consumed for flammability testing is approximately $490,000 for the U.S. fleet. The estimated cost to remove affected seats and seating systems and their components is approximately $285,000 for the U.S. fleet (this estimate assumes that the removal of all seats and seating systems in the fleet). The total estimated cost of this AD for the U.S. fleet is $875,000.

Operators might need to replace only certain components. It is not feasible to include the cost of individual components in this AD because we have no way of determining which components might need replacement.

Operators might need to replace the affected seat with a new seat. The following table provides the estimated costs for U.S. operators to replace the different types of seats. We have no way of determining how many seats might need to be replaced after testing is done to determine if the seats are in compliance. Certain operators might need to replace any type of seat that are generalized by description and estimated per-seat cost in the following table.

TABLE—SEAT REPLACEMENT COST ESTIMATES

| Seat style/class | Aircraft style, foot rest, and recline mechanism | Cost per passenger seat |
|---|---|---|
| Economy | Narrow/Wide Body; Mechanical | $2,300. |
| First, Business | Narrow Body; Mechanical | $7,500. |
| Business | Wide Body; Mechanical | $10,000. |
| Business | Wide Body; Electrical | $25,000 to $35,000. |
| First | Wide Body; Lay flat single place, Electrical | $75,000 to $150,000. |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2011–12–01 Koito Industries, Ltd:** Amendment 39–16708; Docket No. FAA–2010–0857; Directorate Identifier 2010–NM–156–AD.

**Effective Date**

(a) This AD is effective August 1, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Koito Industries, Ltd., seats and seating systems having a model number identified in table 1 of this AD that are approved under technical standard order (TSO) TSO–C39b, TSO–C39c, or TSO–C127a, and installed on, but not limited to, airplanes of the manufacturers identified in table 2 of this AD, all type certificated models in any category.

TABLE 1—SEAT MODELS

| Model Nos. |
|---|
| AFS–105, AFS–136, |
| AFS–235, AFS–315, |
| ARS–183, ARS–189, ARS–190, |
| ARS–200, ARS–242, ARS–242–TA, ARS–254, ARS–255, ARS–263, ARS–276, ARS–277, ARS–281, ARS–289, |
| ARS–29, ARS–29–03, |
| ARS–304, ARS–308, ARS–311, ARS–311–A, ARS–311–B, ARS–336, ARS-339, ARS–341, ARS–347, ARS–352, ARS–354, ARS–357, ARS–360, ARS–384, ARS–385, ARS–392, ARS-397, ARS–398, |
| ARS–415, ARS–417, ARS–418, ARS–419, ARS–423, ARS–424, ARS–425, ARS-427, ARS-431, ARS–437, ARS–446, ARS–447, ARS–448, ARS–451, ARS–452, ARS–465, ARS-478, ARS–480, ARS–482, ARS–483, ARS–493, ARS-494, |
| ARS–507, ARS–510, ARS–511, ARS–514, ARS–516, ARS–518, ARS–527, ARS–542, ARS-543, ARS–550, ARS–552, ARS–553, ARS–554, ARS–571, ARS–574, ARS–577, ARS-588, ARS–589, ARS–591, ARS–592, ARS–593, ARS–594, ARS–595, ARS–596, ARS-597, ARS–598, ARS–599, |
| ARS–600, ARS–601, ARS–604, ARS–605, ARS–607, ARS–610, ARS–611, ARS–613, ARS-615, ARS–616, ARS–617, ARS–620, ARS–626, ARS–627, ARS–629, ARS–636, ARS-641, ARS–642, ARS–643, ARS–644, ARS–646, ARS–647, ARS–649, ARS–651, ARS–652, ARS–657, ARS–658, ARS–659, ARS–667, ARS–668, ARS–669, ARS–670, ARS-671, ARS–672, ARS–673, ARS–674, ARS–694, ARS–697, |
| ARS–704, ARS–707, ARS–709, ARS–710, |
| ARS–813, ARS–814, ARS–815, ARS–823, ARS–831, ARS–832, ARS–833, ARS–835, ARS-836, ARS–837, ARS–838, ARS–840, ARS–841, ARS–843, ARS–844, ARS–846, ARS-847, ARS–849, ARS–851, ARS–852, ARS–853, ARS–857, ARS–858, ARS–859, ARS-861, ARS–862, ARS–869, |
| ASS–197D, |
| ASS–215, |
| ASS–30, ASS–30–1, |
| B–317, |
| F11M11, |
| F44A33, |
| P11B31, P11B33, P11M93, |
| P21B33, P21B35, P21B73, |
| P22A23, |
| P32B73, |
| P52B41, |
| P56B63, |
| PB7–2001, |
| T–316, |
| Y11B31, Y11B33, Y11B73, Y15B73, |
| Y21A23, Y21B73, |
| Y27B73, |
| YE1B35, |
| YG7B35, |
| YH1B73, |
| YK2B73 |

TABLE 2—AFFECTED AIRPLANES

| Manufacturer | Product subtype |
|---|---|
| Airbus | Transport Airplane. |
| The Boeing Company | Transport Airplane. |
| McDonnell Douglas Corporation | Transport Airplane. |
| Mitsubishi Heavy Industries, Ltd. | Transport Airplane. |
| Fokker Services B.V | Transport Airplane. |

**Subject**

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

**Unsafe Condition**

(e) This AD results from a determination that the affected seats and seating systems may not meet certain flammability, static strength, and dynamic strength criteria. Failure to meet static and dynamic strength criteria could result in injuries to the flightcrew and passengers during emergency landing conditions. In the event of an in-flight or post-emergency landing fire, failure to meet flammability criteria could result in an accelerated fire. The Federal Aviation Administration is issuing this AD to prevent accelerated fires and injuries to the flightcrew and passengers.

**Compliance**

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

**Determination of Compliance and Removal**

(g) At the applicable times specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, determine if the seats and seating systems and their components are compliant with FAA regulations specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. For a method to be approved, the approval must specifically refer to this AD. Before re-installing any seat or seating system, modify the existing TSO

tag by defacing the TSO number and letter of designation, *e.g.,* overstrike the TSO identification with an "X" (such as "TSO–C127a" is defaced to look like

" ~~TSO–C127a~~ "

) , and add a tag that specifies non-compliance to the TSO number and letter designation, this AD number, and removal date if applicable.

**Note 1:** Determining if the seats and seating systems and their components are compliant may be done by independent re-qualification of the affected TSO article that has thorough control of the design and production process.

**Note 2:** Components of seats and seating systems include any non-metallic exposed part, assembly, or item. A component can include a seat cushion, recline cable, hook and loop (hook and loop is a generic term for Velcro), and a leather cover that is glued to a seat, headrest, or arm cap.

(1) For Koito Industries, Ltd., seats approved under TSO–C39b or TSO–C39c: Within 2 years after the effective date of this AD, determine if the seats are compliant with 14 CFR 25.561(b)(3)(ii) and 14 CFR 25.561(b)(3)(iii) at the level that the TSO was issued and determine if seats exhibit sharp or injurious surfaces. If any seats are not shown to be compliant with 14 CFR 25.561(b)(3)(ii) and 14 CFR 25.561(b)(3)(iii), or if any seats are shown to exhibit sharp or injurious surfaces in testing conducted to satisfy the original TSO authorization program or subsequent verification tests required by this paragraph, within 2 years after the effective date of this AD, remove the non-compliant seats.

(2) For Koito Industries, Ltd., seating systems approved under TSO–C127a: Within 2 years after the effective date of this AD, determine if the seating systems are compliant with either of the regulations specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD and determine if seating systems exhibit sharp or injurious surfaces. If any seating systems are not shown to be compliant with either of the regulations specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD, or if any seating systems are shown to exhibit sharp or injurious surfaces in testing conducted to satisfy the original TSO authorization program or subsequent verification tests required by this paragraph, within 2 years after the effective date of this AD, remove the non-compliant seating systems, except as provided by paragraph (h) of this AD.

(i) 14 CFR 25.561(b)(3)(ii) and 14 CFR 25.561(b)(3)(iii).

(ii) 14 CFR 25.562(b)(2), and 14 CFR 25.562(c)(7).

(3) For Koito Industries, Ltd., seating systems approved under TSO–C127a that are shown to be compliant with 14 CFR 25.561(b)(3)(ii) and 14 CFR 25.561(b)(3)(iii) and that are shown to not exhibit sharp or injurious surfaces during the actions required by paragraph (g)(2) or (h)(2) of this AD: Within 6 years after the effective date of this AD, determine if the seating systems are compliant with 14 CFR 25.562(b)(2), and 14 CFR 25.562(c)(7) and determine if seating systems exhibit sharp or injurious surfaces. If any seating systems are not shown to be compliant with 14 CFR 25.562(b)(2), and 14 CFR 25.562(c)(7), or if any seating systems are shown to exhibit sharp or injurious surfaces in testing conducted to satisfy the original TSO authorization program or subsequent verification tests required by this paragraph, within 6 years after the effective date of this AD, remove the non-compliant seating systems.

(4) For components of Koito Industries, Ltd., seats approved under TSO–C39b or TSO–C39c and components of seating systems approved under TSO–C127a: Within 3 years after the effective date of this AD, determine if the seat bottom cushion assembly and seat back cushion assembly are shown to be compliant with 14 CFR 25.853(c). If any seat bottom or seat back cushion assembly is not shown to be compliant with 14 CFR 25.853(c), within 3 years after the effective date of this AD, remove the non-compliant seat bottom and or seat back cushion assembly. If a seat cushion is replaced on airplanes required to meet 14 CFR 25.562 requirements (either by their original certification basis or post-type certificate modifications), the replacement seat cushion must have consistent seat bottom stiffness and seat reference point locations using the guidance found in paragraph 9 of Appendix 3 of FAA Advisory Circular 25.562–1B, dated January 10, 2006 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/808324bf7790fda3862571010075bcbf/$FILE/AC25.562-1b.pdf*); however, compliance with 14 CFR 25.562(c)(2), *i.e.* lumbar load, does not need to be shown.

(h) For seating systems that are shown to be compliant with the regulations specified in paragraph (g)(2)(ii) of this AD, but are shown to exhibit sharp or injurious surfaces during the tests required to show compliance with paragraph (g)(2)(ii) of this AD: Do the actions specified in paragraph (h)(1) or (h)(2) of this AD using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(1) Within 2 years after the effective date of this AD: Remove the non-compliant seating systems.

(2) Within 2 years after the effective date of this AD: Determine if the seating systems are compliant with the regulations specified in paragraph (g)(2)(i) of this AD, and determine if the seating systems exhibit sharp or injurious surfaces during the tests required to show compliance with paragraph (g)(2)(i) of this AD. If any seating systems are not shown to be compliant with the regulations specified in paragraph (g)(2)(i) of this AD, or if any seating systems are shown to exhibit sharp or injurious surfaces in testing conducted to satisfy the original TSO authorization program or subsequent verification tests required by this paragraph, within 2 years after the effective date of this AD, remove the non-compliant seating systems.

**Note 3:** For airplanes not required to comply with any 14 CFR 25.562 requirements in either original certification basis or post-type certificate modifications, the use of an FAA Part 21 Production Approval Holder to develop and conduct the test program (in accordance with their procedures, including the control and oversight of the test facility) will facilitate the FAA approval process.

**Note 4:** For airplanes not required to comply with any 14 CFR 25.562 requirements in either original certification basis or post-type certificate modifications, the use of a new-build test article is acceptable for static testing.

**Note 5:** For airplanes not required to comply with any 14 CFR 25.562 requirements in either original certification basis or post-type certificate modifications, conformity inspections of test articles consisting of a seat from the fleet (or from spares), should confirm aspects such as matching the seat part number to that noted in the test plan, noting the general condition of the seat, noting revisions/modifications that have been made to the seat (typically noted on modification placards), and verifying the date of manufacture.

**Note 6:** For all airplanes, it is not required to test all in-service seat part numbers. The use of similarity is acceptable to show that the results obtained from a chosen test article are valid for other seat part numbers. Koito Interface Loads Reports/drawings may be used as a source of guidance for input data for the similarity analysis. The similarity methodology must be agreed on using the procedures specified in paragraph (l) of this AD. For airplanes required to comply with any 14 CFR 25.562 requirements in either original certification basis or post-type certificate modifications, the similarity methodology does not necessarily need to follow all guidelines as given in FAA AC 25.562–1B (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/808324bf7790fda3862571010075bcbf/$FILE/AC25.562-1b.pdf*). However, it must be agreed on using the procedures specified in paragraph (l) of this AD.

**Note 7:** For airplanes required to comply with any 14 CFR 25.562 requirements in either original certification basis or post-type certificate modifications, the use of an FAA Part 21 Production Approval Holder to develop and conduct the test program (in accordance with their procedures, including the control and oversight of the test facility) will facilitate the FAA approval process.

**Note 8:** For airplanes required to comply with any 14 CFR 25.562 requirements in either original certification basis or post-type certificate modifications, the use of a new-build test article is acceptable for static testing. However, in order to account for unknown production non-conformities, test articles for dynamic testing must be seats removed from service or spare seats delivered at the same time as the aircraft, unless newly produced test articles are shown to conform with in-service seats.

**Note 9:** For airplanes required to comply with any 14 CFR 25.562 requirements in either original certification basis or post-type certificate modifications, conformity checks of test articles consisting of a seat from the fleet (or from spares) should confirm aspects such as matching the seat part number to that

noted in the test plan, noting the general condition of the seat, noting revisions/modifications that have been made to the seat (typically noted on modification placards), and verifying the date of manufacture.

**Note 10:** Regarding 14 CFR 25.853(c), in order to account for unknown production non-conformities, test articles should be constructed from in-service cushions. The guidance in FAA AC 25.853–1 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/7f0b93c640a3ae48862569d100732cfe/$FILE/ATT9758X/AC25.853-1.pdf*) is applicable. However, it may also be acceptable to test brand new test specimens, provided that it is shown that the in-service cushions consist of foams/covers which were supplied to Koito and marked by a different production organization approved in the FAA and/or EASA system. Test reports issued by any qualified design organization acceptable to the FAA will be acceptable; after May 23, 2011, any tests performed in the Koito seat cushion oil burner test facility, under JCAB supervision, will be acceptable. An independent approval of the seat cushion, such as a TSO–C72 (individual floatation device) may be sufficient to show compliance.

**Parts Installation: Seats and Seating Systems**

(i) As of the effective date of this AD, no person may install on any airplane any Koito Industries, Ltd., seat and seating system having any model number identified in table 1 of this AD that are approved under TSO–C39b, TSO–C39c, or TSO–C127a; unless it is shown to meet applicable airworthiness requirements, except as specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD.

(1) Seats and seating systems may be removed from service and re-installed on airplanes operated by the same operator.

(2) New seats and seating systems may be installed as direct spares for the same part number seats or seating systems.

**Note 11:** A "direct" spare has the same part number of the part it replaces.

(3) Seats and seating systems installed as direct spares are subject to the applicable requirements and compliance times specified in this AD.

**Parts Installation: Installation and Re-arrangement**

(j) Installation of seats and seating systems other than those installed as direct spares, as specified in paragraph (i) of this AD, is considered a new installation that needs approval and must comply with all regulations, except that re-arrangement of the existing installed seats on an airplane is acceptable following the same installation instructions and limitations as the original certification (*e.g.,* if the original limitations allowed 32″ to 34″ pitch, the new layout must be pitched within that range).

**Parts Installation: Components of Seats and Seating Systems**

(k) As of the effective date of this AD, no person may install on any airplane any component of any seat or seating system having any model number identified in table 1 of this AD that is approved under TSO–C39b, TSO–C39c, or TSO–C127a, unless the component is shown to meet the applicable airworthiness requirements; except as specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD.

(1) Components specified in paragraph (g)(4) of this AD may be removed from service and re-installed on airplanes operated by the same operator.

(2) New components may be installed as direct spares for the same part number components.

(3) Components specified in paragraph (g)(4) of this AD that are installed as direct spares are subject to the applicable requirements and compliance times specified in paragraph (g)(4) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(l)(1) The Manager, Los Angeles 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.

(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**

(m) For more information about this AD, contact Patrick Farina, Aerospace Engineer, Cabin Safety Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5344; fax: 562–627–5210; e-mail: *Patrick.Farina@faa.gov.*

**Material Incorporated by Reference**

(n) None.

Issued in Renton, Washington on May 23, 2011.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate Aircraft Certification Service.*

[FR Doc. 2011–13340 Filed 6–1–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2010–1171; Airspace Docket No. 10–ASW–16]**

## Amendment of Class D Airspace; Corpus Christi, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, technical amendment.

**SUMMARY:** This action amends Class D airspace within the Corpus Christi, TX, area by updating the geographic coordinates for Cabaniss Navy Outlying Field (NOLF). This action does not change the boundaries or operating requirements of the airspace.

**DATES:** *Effective date:* 0901 UTC, August 25th, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

**SUPPLEMENTARY INFORMATION:**

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by adjusting the geographic coordinates, within Class D airspace, of the Cabaniss NOLF, Corpus Christi, TX, to coincide with the FAAs aeronautical database. This is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is

promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Cabaniss NOLF, Corpus Christi, TX.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**Adoption of the Amendment**

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

*Paragraph 5000 Class D Airspace*

* * * * *

**ASW TX D Corpus Christi, TX [Amended]**

Cabaniss NOLF, TX

(Lat. 27°42′10″ N., long. 97°26′20″ W.)

That airspace extending upward from the surface to but not including 1,200 feet MSL within a 4.4-mile radius of Cabaniss NOLF, excluding that airspace within the Corpus Christi International Airport, TX, Class C airspace area; and excluding that airspace within the Corpus Christi, Waldron NOLF, TX, Class D airspace area; and excluding that airspace west of a line between lat. 27°38′15″ N., long. 97°28′40″ W., and lat. 27°41′30″ N., long. 97°28′40″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, Texas, on May 23, 2011.

**Walter L. Tweedy,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–13559 Filed 6–1–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2010–0608; Airspace Docket No. 10–ACE–6]**

## Amendment of Class E Airspace; Mosby, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace for Mosby, MO. Decommissioning of the Mosby non-directional beacon (NDB) at Midwest National Air Center Airport, Mosby, MO, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** *Effective date:* 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

**SUPPLEMENTARY INFORMATION:**

### History

On January 10, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Mosby, MO, reconfiguring controlled airspace at Midwest National Air Center Airport (76 FR 1377) Docket No. FAA–2010–0608. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface for the Mosby, MO area. Decommissioning of the Mosby NDB and cancellation of the NDB approach at Midwest National Air Center Airport has made this action necessary for the safety and management of IFR operations at the airport.

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

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**Adoption of the Amendment**

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation

Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

* * * * *

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

* * * * *

**ACE MO E5 Mosby, MO [Amended]**

Mosby, Midwest National Air Center Airport, MO

(Lat. 39°19′57″ N., long. 94°18′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Midwest National Air Center Airport.

Issued in Fort Worth, Texas, on May 23, 2011.

**Walter L. Tweedy,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–13586 Filed 6–1–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 91

**[Docket No. FAA–2001–10047; Amdt. No. 91–322]**

**RIN 2120–AH06**

## Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations; Technical Amendment

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The FAA is amending its regulations governing operations of aircraft in fractional ownership programs. This document corrects a technical error in the codified text of the regulations.

**DATES:** Effective June 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Everette Rochon, General Aviation and Commercial Division, AFS–800, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: 202–267–7413; e-mail: *everette.rochon@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On September 17, 2003, the FAA published a final rule entitled, "Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations" (68 FR 54520).

In that final rule the FAA updated and revised the regulations governing operations of aircraft in fractional ownership programs.

### Technical Amendment

This technical amendment makes one revision to the final rule. The language in § 91.1091(f)(2) incorrectly uses the term "check pilot" when the term "flight instructor" should have been used. Accordingly, this amendment revises § 91.1091(f)(2).

Because the section title applies to flight instructors it is obvious that the use of the term "check pilot" in (f)(2) should have been "flight instructor". This technical amendment corrects an incorrect term and we find good cause exists under 5 U.S.C. 553(d)(3) to make the amendment effective in less than 30 days.

### List of Subjects in 14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, and Yugoslavia.

### The Amendment

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

## PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. Amend § 91.1091 by revising paragraph (f)(2) to read as follows:

**§ 91.1091 Qualifications: Flight instructors (aircraft) and flight instructors (simulator).**

* * * * *

(f) * * *

(2) Satisfactorily complete an approved line-observation program within the period prescribed by that program preceding the performance of any flight instructor duty in a flight simulator.

* * * * *

Issued in Washington, DC on May 26, 2011.

**Dennis R. Pratte,**

*Acting Director, Office of Rulemaking.*

[FR Doc. 2011–13675 Filed 6–1–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## U.S. Customs and Border Protection

## 19 CFR Part 122

**[CBP Dec. 11–13]**

## Technical Amendment to List of User Fee Airports: Addition of Dallas Love Field Municipal Airport, Dallas, TX

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document amends the regulations pertaining to the organization of U.S. Customs and Border Protection (CBP) by revising the list of user fee airports to reflect the recent user fee airport designation for Dallas Love Field Municipal Airport, in Dallas, Texas. User fee airports are those airports which, while not qualifying for designation as international or landing rights airports, have been approved by the Commissioner of CBP to receive, for a fee, the services of CBP officers for the processing of aircraft entering the United States, and the passengers and cargo of those aircraft.

**DATES:** *Effective Date:* June 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Roger Kaplan, Acting Director, Audits and Self-Inspection, Office of Field Operations, at 202–325–4543 or by e-mail at *Roger.Kaplan@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Title 19, Code of Federal Regulations (CFR), sets forth at Part 122 the regulations relating to the entry and clearance of aircraft in international commerce and the transportation of persons and cargo by aircraft in international commerce.

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport, and, if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Public Law 98–573 (the Trade and Tariff Act of 1984), codified

at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international airport or a landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of Homeland Security as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Commissioner of CBP as delegated by the Secretary of Homeland Security determines that the volume of business at the airport is insufficient to justify customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Commissioner of CBP in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Commissioner of CBP to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

The Commissioner of CBP designates airports as user fee airports pursuant to 19 U.S.C. 58b. If the Commissioner decides that the conditions for designation as a user fee airport are satisfied, a Memorandum of Agreement (MOA) is executed between the Commissioner of CBP and the local responsible official signing on behalf of the state, city or municipality in which the airport is located. In this manner, user fee airports are designated on a case-by-case basis. The regulation pertaining to user fee airports is 19 CFR 122.15. It addresses the procedures for obtaining permission to land at a user fee airport, the grounds for withdrawal of a user fee designation and includes the list of user fee airports designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b. Periodically, CBP updates the list of user fee airports at 19 CFR 122.15(b) to reflect those that have been recently designated by the Commissioner. On January 28, 2011, the Commissioner signed an MOA approving the designation of user fee status for Dallas Love Field Municipal Airport. This document updates the list of user fee airports by adding Dallas Love Field Municipal Airport, in Dallas, Texas, to the list.

## II. Statutory and Regulatory Requirements

### *A. Inapplicability of Public Notice and Delayed Effective Date Requirements*

Because this amendment merely updates the list of user fee airports to include an airport already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b and neither imposes additional burdens on, nor take away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

### *B. The Regulatory Flexibility Act and Executive Order 12866*

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

### *C. Unfunded Mandates Reform Act of 1995*

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

### *D. Executive Order 13132*

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

### *E. Signing Authority*

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

**List of Subjects in 19 CFR Part 122**

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

Part 122, Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

## PART 122—AIR COMMERCE REGULATIONS

■ 1. The authority citation for Part 122 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

**§ 122.15 [Amended]**

■ 2. The listing of user fee airports in section 122.15(b) is amended by adding, in alphabetical order, in the "Location" column "Dallas, Texas" and in the "Name" column, "Dallas Love Field Municipal Airport".

Dated: May 24, 2011.

**Alan D. Bersin,**

*Commissioner, U.S. Customs and Border Protection.*

[FR Doc. 2011–13615 Filed 6–1–11; 8:45 am]

BILLING CODE 9111–14–P

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## 21 CFR Part 1310

**[Docket No. DEA–228F]**

**RIN 1117–AA66**

## Chemical Mixtures Containing Listed Forms of Phosphorus and Change in Application Process

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rulemaking finalizes a June 25, 2010, notice of proposed rulemaking in which DEA proposed regulations which establish those chemical mixtures containing red phosphorus or hypophosphorous acid and its salts (hereinafter "regulated phosphorus") that shall automatically qualify for exemption from the

Controlled Substances Act (CSA) regulatory controls. Chemical mixtures containing red phosphorus in a concentration of 80 percent or less and mixtures containing hypophosphorous acid and its salts (hypophosphite salts) in a concentration of 30 percent and less, shall qualify for automatic exemption. DEA is not implementing automatic exemption for any concentration of chemical mixtures containing white phosphorus (also known as yellow phosphorus). Unless otherwise exempted, all material containing white phosphorus shall become subject to CSA chemical regulatory controls regardless of concentration.

DEA recognizes that concentration criteria alone cannot identify all mixtures that warrant exemption; therefore, an application process has been implemented which allows manufacturers to apply for exemption from CSA regulatory controls for those phosphorus chemical mixtures that do not qualify for automatic exemption. This rulemaking also finalizes changes to the application review and notification process.

**DATES:** This rulemaking becomes effective July 5, 2011. Persons seeking registration must apply on or before July 5, 2011 to continue their business pending final action by DEA on their application.

**FOR FURTHER INFORMATION CONTACT:** Imelda L. Paredes, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone (202) 307–8784.

**SUPPLEMENTARY INFORMATION:**

## DEA's Legal Authority

DEA implements the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to end. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical purposes and to deter the diversion of controlled substances to illegal purposes. The CSA mandates that DEA establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt) and comply with the applicable requirements for the activity. The CSA, as amended, also requires DEA to regulate the manufacture, distribution, importation, and exportation of chemicals that may be used to manufacture controlled substances. Listed chemicals that are classified as List I chemicals are important to the manufacture of controlled substances. Those classified as List II chemicals may be used to manufacture controlled substances.

## Purpose of This Rule

In this rule, DEA is finalizing concentration limits on chemical mixtures containing red phosphorus and/or hypophosphorous acid and its salts. This rule is being finalized as proposed. Chemical mixtures containing either of these listed chemicals at or below the concentration limit will be automatically exempt from CSA regulatory controls. Mixtures containing these chemicals above the concentration limit will be regulated as List I chemicals. DEA did not propose automatic exemption for chemical mixtures containing white phosphorus. Unless otherwise exempted, all material containing white phosphorus shall be subject to CSA chemical regulatory controls regardless of concentration.

## DEA's Requirement To Identify Exempt Chemical Mixtures

The Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100–690) (CDTA) created a definition for the term "chemical mixture" (21 U.S.C. 802(40)). The CDTA also established 21 U.S.C. 802(39)(A)(vi) to exclude "any transaction in a chemical mixture" from the definition of a "regulated transaction." This exemption was exploited by those that traffic chemicals for illicit purposes in that it provided an unregulated source for obtaining listed chemicals for use in the illicit manufacture of controlled substances.

In April 1994, the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200) (DCDCA) corrected this situation by subjecting such chemical mixtures to CSA regulatory requirements, unless specifically exempted by regulation. These requirements included recordkeeping, reporting, and security for all regulated chemical mixtures with the additional requirement of registration for handlers of List I chemicals including regulated chemical mixtures. The DCDCA also provided the Attorney General with the authority to establish regulations to exempt chemical mixtures from the definition of a "regulated transaction." A chemical mixture can be granted exemption "based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered" (21 U.S.C. 802(39)(A)(vi)). This authority has been delegated to the Administrator of DEA by 28 CFR 0.100 (Subpart R).

DEA has treated all regulated chemical mixtures as non-regulated chemicals until such time that it promulgates a final rule that identifies concentration limits, above which the chemical mixtures are regulated. This served to prevent the immediate regulation of all qualified mixtures, which is not necessary. It also allowed DEA to gather information to implement regulations pursuant to 21 U.S.C. 802(39)(A)(vi).

## Chemical Mixture Definition

21 U.S.C. 802(40) defines the term "chemical mixture" as "a combination of two or more chemical substances, at least one of which is not a List I chemical or a List II chemical, except that such term does not include any combination of a List I chemical or a List II chemical with another chemical that is present solely as an impurity." Therefore, a chemical mixture contains any number of listed chemicals in combination with any number of non-listed chemicals.

DEA does not consider a chemical mixture to mean the combination of a listed chemical and an inert carrier. An inert carrier can be any chemical that does not modify the function of the listed chemical but is present to aid in the delivery of the listed chemical. Examples include, but are not limited to, dilutions in water, alcohol, or the presence of a carrier gas.

In determining which chemical mixtures shall be subject to control, DEA considers the actual and potential clandestine use of such material. 21 U.S.C. 802(39)(A)(vi) states that an exemption can be granted if "the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered." It should be noted that the requirements described by statute do not allow for exemptions based on such business practices as selling only to known customers, the cost of the mixture, the customer's knowledge of the product's chemical content, packaging, or such related topics.

In 2003, DEA published a Final Rule (68 FR 23195, May 1, 2003) that

identified exempt mixtures containing the chemicals ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and pseudoephedrine. The effective date of this Final Rule was June 2, 2003. In a second Final Rule (69 FR 74957, December 15, 2004; corrected at 70 FR 294, January 4, 2005) DEA finalized regulations which addressed the exemption of chemical mixtures for 27 of the remaining 38 listed chemicals. However, chemical mixtures containing phosphorus were not included. The effective date for that Final Rule was January 14, 2005.

**Uses of Chemical Mixtures Containing Regulated Phosphorus**

Chemical mixtures that contain red phosphorus are used in the manufacture of plastics, flame retardants, pyrotechnics, striker plates (*e.g.,* for safety matches and flares), incendiary shells, smoke bombs, and tracer bullets. Chemical mixtures containing hypophosphorous acid salts (*e.g.,* hypophosphite salts) function as catalysts, stabilizers, and growth inhibitors. They are used in plastics, films, paints, paper products, and fibers with applications that include automotive parts, furniture, wiring, containers, and housings for appliances and power tools. DEA has not identified any chemical mixtures containing white phosphorus.

**Diversion of Chemical Mixtures Containing Regulated Phosphorus**

Regulated phosphorus plays an important role in the chemical reaction to produce methamphetamine, a schedule II controlled substance for which the public health consequences of the manufacture, trafficking, and abuse are well known and documented. DEA has documented that the predominant method for the illicit manufacture of methamphetamine utilizes phosphorus.

DEA has identified chemical mixtures containing red phosphorus at domestic illicit methamphetamine manufacturing sites. Traffickers sometimes utilize the striker plates of safety matchbooks or boxes or road flares as a source of red phosphorus. The coating on the striker plate contains from 25 to 60 percent red phosphorus. An estimated 20 to 400 striker plates are needed to obtain one gram of red phosphorus. One gram of red phosphorus could yield approximately 1.5 grams of methamphetamine hydrochloride, which is the end product of clandestine manufacturing.

**Concentration Limits for Exempt Chemical Mixtures Containing Regulated Phosphorus**

DEA is establishing concentration limits for chemical mixtures containing phosphorus. All chemical mixtures that have a concentration at or below the established concentration limit shall be automatically exempt from CSA chemical regulatory controls. Those chemical mixtures having a concentration above the concentration limit shall be List I regulated chemicals and subject to the chemical regulatory requirements of the CSA.

DEA is not aware of any chemical mixtures containing white phosphorus. It is believed that few chemical mixtures in this chemical exist because it is too reactive and unstable when mixed with other chemicals. Since DEA has not identified any white phosphorus mixtures, DEA did not propose a concentration limit for white phosphorus, and, therefore, any chemical mixture containing white phosphorus shall be subject to CSA regulatory control.

Hypophosphorous acid is marketed in aqueous solutions of 50 percent and can be readily used in the illicit manufacture of methamphetamine. Such aqueous solutions of hypophosphorous acid, however, are not considered chemical mixtures and are, therefore, currently subject to DEA chemical regulations, regardless of concentration. (As stated earlier, DEA does not consider a chemical mixture to mean the combination of a listed chemical and an inert carrier. An inert carrier can be any chemical that does not modify the function of the listed chemical but is present to aid in the delivery of the listed chemical. Examples include, but are not limited to, dilutions in water, alcohol, or the presence of a carrier gas.) No chemical mixtures containing hypophosphorous acid have been identified by DEA.

Traffickers use hypophosphite salts and hypophosphorous acid similarly. DEA has identified several chemical mixtures containing hypophosphite salts in combination with other chemicals for use as mold and mildew inhibitors. Additionally, DEA has identified at least one industrial product where sodium hypophosphite is in a chemical mixture in combination with resins. The concentration of hypophosphite salts within these chemical mixtures does not exceed 20 percent.

The above chemical mixtures have limited potential for use in a clandestine laboratory because of the: (a) Low concentrations of the hypophosphite salts, and (b) interference from other chemicals in the mixtures. Therefore, DEA is establishing a 30 percent concentration limit for hypophosphorous acid and its salts (hypophosphite salts).

It is important to clarify, again, that DEA does not consider a chemical mixture to mean the combination of a listed chemical and an inert carrier. Therefore, solutions of hypophosphorous acid or hypophosphite salt in water, alcohol, or another inert carrier are not considered chemical mixtures and are, therefore, currently subject to DEA chemical regulatory controls regardless of concentration.

As discussed above, only the smallest clandestine methamphetamine laboratories use chemical mixtures obtained from matchbook striker plates as a source of red phosphorus. Although concerned about this type of diversion, DEA determined that the regulation of matchbook striker plates is impractical and will create undue administrative burdens for both law enforcement and the regulated sector.

DEA is establishing an 80 percent concentration limit for red phosphorus. DEA has determined that chemical mixtures containing over 80 percent red phosphorus are useful in large scale methamphetamine production and, therefore, should not be automatically exempt from regulatory controls.

A chemical mixture having a regulated form of phosphorus at or below the concentration limit can still be a regulated chemical mixture if another listed chemical is present above its concentration limit. The exemption of chemical mixtures from regulatory controls does not remove criminal liability for persons who knowingly sell or possess any products containing regulated phosphorus for use in violation of the CSA.

**Comments to the Notice of Proposed Rulemaking**

In response to the June 25, 2010, Notice of Proposed Rulemaking (75 FR 36306), DEA received two comments. The first comment was received from a large chemical company. This firm indicated that they have one product which they export which shall become subject to regulation. However, the firm stated that they will not be significantly impacted by this rulemaking and supported the mixture criteria proposed in the rule. Furthermore, the comment commended DEA for taking a reasonable approach.

*DEA Response.* DEA appreciates this comment and believes that the concentration limits finalized in this

rule are reasonable based on the illicit uses of phosphorus mixtures.

The second comment was from an association representing full-service wholesale healthcare distributors. Their members distribute more than 9 million prescription and healthcare products. The comment stated that they reached out to their members in an attempt to identify specific products containing phosphorus which would be subject to the proposed regulatory controls. Their review indicated that they do not believe that any healthcare product distributors' products are subject to the proposed rule. However, the association expressed concern that wholesale distributors may be subjected to a rule without sufficient ability to provide meaningful public comment. The commenter posited that, during the comment period, other public comments may be received that would contain further information about products that could be subject to the rule and which may also pertain to products distributed by healthcare product distributors. The association recommended that DEA reopen the rule's comment period if the notice and comment period resulted in DEA obtaining further information relevant to the chemical mixtures or products potentially subject to the rule.

*DEA Response.* As DEA did not receive other comments to the NPRM identifying chemical mixtures containing listed forms of phosphorus, DEA believes that it has thoroughly examined the number and types of mixtures potentially affected by this rule and has adequately addressed the impact of this rule on the regulated community. DEA notes, in fact, that the only other commenter to this rule supported the rule as proposed. This conclusion is consistent with information developed by DEA, through DEA's research and comments received in response to the Advanced Notice of Proposed Rulemaking published January 31, 2003, (68 FR 4968) which specifically sought such information from interested parties. DEA does not believe that any products distributed by healthcare distributors will fall under the regulatory controls being finalized here. Therefore, DEA does not believe that this final rule will have any impact on this association's members.

After careful consideration of the comments received, DEA is hereby finalizing these regulatory controls exactly as proposed in the June 25, 2010, Notice of Proposed Rulemaking (75 FR 36306).

**Exemption by Application Process**

DEA recognizes that the concentration limits established in this rule may not identify all phosphorus mixtures that should receive exemption status. DEA has implemented an application process to exempt additional mixtures (21 CFR 1310.13). This application process was finalized in the Final Rule (68 FR 23195) published May 1, 2003. Under the application process, manufacturers may submit an application for exemption for those mixtures that do not qualify for automatic exemption. Exemption status can be granted if DEA determines that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and the listed chemical cannot be readily recovered (*i.e.,* it meets the conditions in 21 U.S.C. 802(39)(A)(vi)). An application may be for a single or a multiple number of formulations. All chemical mixtures which are granted exemption via the application process will be listed in 21 CFR 1310.13(i).

This rulemaking also establishes changes to the existing application process. 21 CFR 1310.13(e) provides that within 30 days after the receipt of an application for an exemption, the Administrator will notify the applicant of acceptance or rejection of the application. This paragraph is being modified in order to clarify that this acceptance or rejection only pertains to the acceptance or rejection of the application "for filing" and does not pertain to the granting or denial of the application based upon the merits of the application. Furthermore, DEA is modifying this paragraph by removing the 30 day timeframe for notification, and instead, specify that such notification be "in writing" and "within a reasonable period of time".

**Thresholds and Excluded Transactions for Regulated Phosphorus Chemical Mixtures**

Regulated phosphorus compounds do not have a threshold as described in 21 CFR 1310.04(g)(1). Thus, all transactions in regulated phosphorus, including its regulated chemical mixtures, are regulated transactions. Certain transactions, described in 21 CFR 1310.08 are excluded from the definition of a regulated transaction. These are domestic and international return shipments of reusable containers from customer to producer containing residual quantities of red phosphorus or white phosphorus in rail cars and intermodal tank containers which conform to International Standards Organization specifications (with capacities greater than or equal to 2500 gallons in a single container). This exclusion also applies to regulated chemical mixtures containing red phosphorus or white phosphorus.

**Requirements That Apply to Regulated List I Chemical Mixtures**

Persons interested in handling List I chemicals, including regulated chemical mixtures containing List I chemicals, must comply with the following:

*Registration.* Any person who manufactures, distributes, imports, or exports a List I chemical, or proposes to engage in the manufacture, distribution, importation, or exportation of a List I chemical, must obtain a registration pursuant to the CSA (21 U.S.C. 823, 957). Regulations describing registration for List I chemical handlers are set forth in 21 CFR part 1309.

Separate registration is required for manufacturing, distribution, importing, and exporting. Different locations operated by a single entity require separate registration if any location is involved with the manufacture, distribution, import, or export of a List I chemical. Any person manufacturing, distributing, importing, or exporting a regulated List I chemical mixture is subject to the registration requirement under the CSA. DEA recognizes, however, that it is not possible for persons who manufacture, distribute, import, or export regulated phosphorus compounds to immediately complete and submit an application for registration and for DEA to issue registrations immediately for those activities. Therefore, to allow continued legitimate commerce in the compounds, DEA is establishing in 21 CFR 1310.09 a temporary exemption from the registration requirement for persons desiring to manufacture, distribute, import, or export regulated phosphorus compounds, provided that DEA receives a properly completed application for registration on or before July 5, 2011. The temporary exemption for such persons will remain in effect until DEA takes final action on their application for registration.

The temporary exemption applies solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, will remain in effect. Additionally, the temporary exemption does not suspend applicable Federal criminal laws relating to the phosphorus compounds, nor does it supersede state or local laws or regulations. All handlers of these materials must comply with their state and local requirements in addition to the CSA and other Federal regulatory controls.

DEA notes that warehouses are exempt from the requirement of registration and may lawfully possess List I chemicals, if the possession of those chemicals is in the usual course of business (21 U.S.C. 822(c)(2), 21 U.S.C. 957(b)(1)(B)). For purposes of this exemption, the warehouse must receive the List I chemical from a DEA registrant and shall only distribute the List I chemical back to the DEA registrant and registered location from which it was received. All other activities conducted by a warehouse do not fall under this exemption; a warehouse that distributes List I chemicals to persons other than the registrant and registered location from which they were obtained is conducting distribution activities and is required to register as such (21 U.S.C. 802(39)(A)(ii)).

*Records and Reports.* The CSA (21 U.S.C. 830) requires that certain records be kept and reports be made that involve listed chemicals. Regulations describing recordkeeping and reporting requirements are set forth in 21 CFR Part 1310. A record must be made and maintained for two years after the date of a transaction involving a listed chemical, provided the transaction is a regulated transaction.

Each regulated bulk manufacturer of a regulated mixture shall submit manufacturing, inventory and use data on an annual basis (21 CFR 1310.05(d)). Bulk manufacturers producing the mixture solely for internal consumption, *e.g.,* formulating a non-regulated mixture, are not required to submit this information. Existing standard industry reports containing the required information are acceptable, provided the information is readily retrievable from the report.

Title 21 CFR 1310.05 requires that each regulated person shall report to DEA any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of the CSA. Regulated persons are also required to report to DEA any proposed regulated transaction with a person whose description or other identifying information has been furnished to the regulated person. Finally, regulated persons are required to report any unusual or excessive loss or disappearance of a listed chemical.

*Import/Export.* All imports/exports of a listed chemical shall comply with the CSA (21 U.S.C. 957 and 971). Regulations for importation and exportation of List I chemicals are described in 21 CFR Part 1313. Separate registration is necessary for each activity (21 CFR 1309.22).

*Security.* All applicants and registrants shall provide effective controls against theft and diversion of chemicals as described in 21 CFR 1309.71.

*Administrative Inspection.* Places, including factories, warehouses, or other establishments and conveyances, where regulated persons may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of a regulated chemical/chemical mixture, or where records relating to those activities are maintained, are controlled premises as defined in 21 CFR 1316.02(c). The CSA (21 U.S.C. 880) allows for administrative inspections of these controlled premises as provided in 21 CFR part 1316 subpart A.

The goal of this rulemaking is to deny traffickers access to regulated phosphorus compounds while minimizing the burden on legitimate industry. Persons who obtain a regulated chemical, but do not distribute the chemical, are end users. End users are not subject to CSA chemical regulatory control provisions such as registration or recordkeeping requirements. Some examples of end users are those who chemically react phosphorus compounds and change them into non-listed chemicals, formulate phosphorus compounds into exempt chemical mixtures or consume them in industrial processes.

**Technical Revision to 21 CFR 1310.12(a) and 1310.13(i)**

While preparing the June 25, 2010 Notice of Proposed Rulemaking, DEA became aware that references to Section 1018 of the Act (21 U.S.C. 971) were inadvertently omitted from 21 CFR 1310.12(a) and 1310.13(i). Therefore, DEA proposed the amendment of these sections by adding this citation. This Final Rule implements that modification. This insertion is a clarification and does not alter the current treatment of exempt chemical mixtures under the CSA.

As DEA discussed in its December 15, 2004, Final Rule (specifically 69 FR 74963, comment 10) all chemical mixtures not exempt from CSA regulatory controls are subject to all aspects of those controls, including importation and exportation requirements. Thus, chemical mixtures that are exempt under 21 CFR 1310.12 and 1310.13 are also exempt from the requirements of Section 1018 of the Act (21 U.S.C. 971). The requirements of 21 U.S.C. 971 apply to "each regulated person, who imports or exports a listed chemical." Since a person distributing an exempt chemical mixture is not a "regulated person" as defined by 21 U.S.C. 802(38), that person is exempt from the requirements of 21 U.S.C. 971.

DEA notes that this is a technical correction only. All exempt chemical mixtures have been treated as such for import and export purposes, and all regulated mixtures have been treated as regulated transactions for import and export purposes. DEA is merely including a reference which was inadvertently omitted from this regulatory language.

**Regulatory Analyses**

**Regulatory Flexibility and Small Business Concerns**

The Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612). The RFA requires agencies to determine whether a rulemaking could have a significant economic impact on a substantial number of small entities. DEA sought comment on two separate occasions regarding this action. On January 31, 2003, DEA published in the **Federal Register** an ANPRM (68 FR 4968) to solicit input from industry regarding chemical mixtures containing regulated phosphorus. DEA received three responses to this request, all from industrial firms. In addition, DEA obtained information on types of formulations containing regulated phosphorus and their uses separate from the ANPRM. All three commenters to the ANPRM informed DEA of commercial applications for their chemical mixtures containing regulated phosphorus. The commenters also informed DEA of concentration ranges for red phosphorus and salts of hypophosphorous acid (*e.g.* hypophosphite salts). In the NPRM, DEA sought information from manufacturers about the impact of setting concentration limits for chemical mixtures containing phosphorus. Only two comments were received in response to the NPRM. Neither of these comments noted information to change DEA's belief that the cost of compliance with this rule is low and is unlikely to impose a significant cost on any manufacturing, distributing, importing, or exporting firm. DEA has not identified any chemical mixtures containing hypophosphorous acid or white phosphorus either through industry comments or as a result of DEA research. It is possible, therefore, that there are no entities that will be subject to DEA's requirements because of this

rule. Nonetheless, DEA provides the following discussion describing small businesses that might potentially handle these chemical mixtures.

The rules for listed chemicals apply to chemical manufacturers, distributors, importers, and exporters. The chemical manufacturers that would handle mixtures containing phosphorus would probably be classified in the all other basic inorganic chemical manufacturers sector (NAICS 325188). The average value of shipments for chemical manufacturers in this sector with 1–9 employees ranges from $2 million to $5.6 million. Because the recordkeeping requirements can be met with standard business records and most firms maintain adequate security to meet DEA's regulations, the only cost directly associated with this rule for a chemical manufacturer would be the DEA registration fee of $2,293, which represents approximately 0.1 percent of the value of shipments for the smallest firm. DEA assumes that chemical distributors, importers, and exporters that would handle mixtures containing phosphorus fall into the other chemical and allied products merchant wholesalers sector (NAICS 424690). The average revenue of chemical wholesalers with 1–4 employees is approximately $2.5 million. The only cost directly associated with this rule for a chemical distributor, importer, or exporter would be the DEA registration fee of $1,147, which represents approximately 0.04 percent of revenue for the smallest chemical wholesalers. Based on both the lack of entities identified that may be subject to this regulation and the low cost of the rule, DEA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

**Executive Orders 13563 and 12866**

This regulation has been developed in accordance with the principles of Executive Orders 13563 and 12866 and has been reviewed by the Office of Management and Budget. The information DEA received in response to the ANPRM and NPRM indicate that few phosphorus mixtures will be subject to the regulation. Those mixtures appear to be produced by current DEA registrants on whom the rule will impose no new requirements.

As stated earlier in this rulemaking the vast majority of the chemical mixtures that will become subject to this rulemaking have large industrial uses. Regulated chemical mixtures are not items having common household uses. Although concerned about the diversion of matchbook striker plates, DEA determined that the regulation of matchbook striker plates is impractical and will create undue administrative burdens for both law enforcement and the regulated sector.

*Benefits.* Phosphorus is a chemical important in the clandestine manufacture of methamphetamine and amphetamine. This rule seeks to eliminate the use of certain chemical mixtures whose high concentrations of phosphorus make them valued by traffickers seeking this chemical for their clandestine laboratory operations.

The surge in methamphetamine abuse and the manufacture of the drug in clandestine laboratories have caused serious law enforcement and environmental problems, particularly in rural communities.

This rule is intended to continue the trend of reducing the number of clandestine laboratories. This trend will reduce the cost to state and local governments as well as the hazard to law enforcement officers and others from exposure to the toxic chemicals left behind.

**Executive Order 12988**

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards and reduce burden.

**Executive Order 13132**

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $126,400,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Congressional Review Act**

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Executive Order 13175**

This rule will not have Tribal implications and will not impose substantial direct compliance costs on Indian Tribal governments.

**Paperwork Reduction Act**

This rule establishes regulations stating that chemical mixtures containing 80 percent and less of red phosphorus or 30 percent and less of hypophosphorous acid or its salts are automatically exempt from CSA regulatory controls pertaining to chemicals and that no automatic exemption be established for chemical mixtures containing white phosphorus. Under this method of automatic exemption, persons who handle these exempt chemical mixtures will not be subject to CSA regulatory controls, including the requirement to register with DEA, the requirement to report manufacturing activities to DEA annually, and the requirement to file importation and exportation advance notification and return declaration information with DEA. For persons handling regulated chemical mixtures, DEA anticipates granting some of these mixtures exempt status by the application process (21 CFR 1310.13).

Given comments received in response to the NPRM, DEA does not believe that the impact will be significant. DEA anticipates that some chemical mixtures would be granted exemptions based on the application process.

**List of Subjects in 21 CFR Part 1310**

Drug traffic control, List I and List II chemicals, reporting requirements.

For the reasons set out above, 21 CFR part 1310 is amended as follows:

## PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

■ 1. The authority citation for part 1310 continues to read as follows:

**Authority:** 21 U.S.C. 802, 827(h), 830, 871(b), 890.

■ 2. Section 1310.09 is amended by adding paragraph (m) to read as follows:

**§ 1310.09 Temporary exemption from registration.**

* * * * *

(m)(1) Each person required by Sections 302 or 1007 of the Act (21

U.S.C. 822, 957) to obtain a registration to manufacture, distribute, import, or export regulated chemical mixtures which contain red phosphorus, white phosphorus, hypophosphorous acid (and its salts), pursuant to §§ 1310.12 and 1310.13, is temporarily exempted from the registration requirement, provided that DEA receives a properly completed application for registration or application for exemption on or before July 5, 2011. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in parts 1309, 1310, and 1313 of this chapter remain in full force and effect.

(2) Any person who manufactures, distributes, imports, or exports a chemical mixture which contains red phosphorus, white phosphorus, hypophosphorous acid (and its salts) whose application for exemption is subsequently denied by DEA must obtain a registration with DEA. A temporary exemption from the registration requirement will also be provided for those persons whose applications are denied, provided that DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for exemption has not been approved. The temporary exemption for such persons will remain in effect until DEA takes final action on their registration application.

■ 3. Section 1310.12 is amended by revising paragraph (a) and by amending the Table of Concentration Limits in paragraph (c) by adding entries for "hypophosphorous acid and its salts", "red phosphorus", and "white phosphorus" in alphabetical order under "List I Chemicals" to read as follows:

**§ 1310.12 Exempt chemical mixtures.**

(a) The chemical mixtures meeting the criteria in paragraphs (c) or (d) of this section are exempted by the Administrator from application of sections 302, 303, 310, 1007, 1008, and 1018 of the Act (21 U.S.C. 822, 823, 830, 957, 958, and 971) to the extent described in paragraphs (b) and (c) of this section.

* * * * *

(c) * * *

TABLE OF CONCENTRATION LIMITS

| | DEA chemical code No. | Concentration (percent) | Special conditions |
|---|---|---|---|
| List I Chemicals | | | |
| * | * | * | * * * * |
| Hypophosphorous acid and its salts. | 6797 | 30% by weight if a solid, weight or volume if a liquid. | The weight is determined by measuring the mass of hypophosphorous acid and its salts in the mixture, the concentration limit is calculated by summing the concentrations of all forms of hypophosphorous acid and its salts in the mixture. The Administration does not consider a chemical mixture to mean the combination of a listed chemical and an inert carrier. Therefore, any solution consisting of hypophosphorous acid (and its salts), dispersed in water, alcohol, or another inert carrier, is not considered a chemical mixture and is therefore subject to chemical regulatory controls at all concentrations. |
| * | * | * | * * * * |
| Red Phosphorus ..... | 6795 | 80% by weight. | |
| * | * | * | * * * * |
| White phosphorus ..... | 6796 | Not exempt at any concentration. | Chemical mixtures containing any amount of white phosphorus are not exempt due to concentration, unless otherwise exempted. |
| * | * | * | * * * * |

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■ 4. Section 1310.13 is amended by revising paragraph (e) and paragraph (i) introductory text to read as follows:

**§ 1310.13 Exemption of chemical mixtures; application.**

* * * * *

(e) Within a reasonable period of time after the receipt of an application for an exemption under this section, the Administrator will notify the applicant in writing of the acceptance or rejection of the application for filing. If the application is not accepted for filing, an explanation will be provided. The Administrator is not required to accept an application if any information required pursuant to paragraph (c) of this section or requested pursuant to paragraph (d) of this section is lacking or not readily understood. The applicant may, however, amend the application to meet the requirements of paragraphs (c) and (d) of this section. If the exemption is subsequently granted, the applicant shall again be notified in writing and the Administrator shall issue, and publish in the **Federal Register**, an order on the application. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order. If any comments or objections raise significant issues regarding any findings of fact or conclusions of law upon which the order is based, the Administrator may suspend the effectiveness of the order until he has reconsidered the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, terminate, or amend the original order as deemed appropriate.

* * * * *

(i) The following chemical mixtures, in the form and quantity listed in the application submitted (indicated as the "date") are designated as exempt chemical mixtures for the purposes set forth in this section and are exempted by the Administrator from application of Sections 302, 303, 310, 1007, 1008, and 1018 of the Act (21 U.S.C. 822, 823, 830, 957, 958, and 971):

* * * * *

Dated: May 16, 2011.

**Michele M. Leonhart,**

*Administrator.*

[FR Doc. 2011–13686 Filed 6–1–11; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Parts 1, 27, 96, 101, 107, 115, 117, 135, 140, 148, 150, 151, 160, 161, 162, 164, 166, 167, and 169

**[Docket No. USCG–2011–0257]**

**RIN 1625–AB69**

## Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule makes non-substantive changes throughout Title 33 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard navigation and navigable water regulations. This rule will have no substantive effect on the regulated public. These changes are provided to coincide with the annual recodification of Title 33 on July 1, 2011.

**DATES:** This final rule is effective June 2, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0257 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2011–0257 in the "Keyword" box, and then clicking "Search."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Leo Huott, Coast Guard; telephone 202–372–1027, e-mail *Leo.S.Huott@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents for Preamble

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### I. Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(A) the Coast Guard finds this rule is exempt from notice and comment rulemaking requirements because these changes involve rules of agency organization, procedure, or practice. In addition, the Coast Guard finds notice and comment procedures are unnecessary under 5 U.S.C. 553(b)(B) as this rule consists only of corrections and editorial, organizational, and conforming amendments and these changes will have no substantive effect on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective upon publication in the **Federal Register**.

### II. Background

Each year, the printed edition of Title 33 of the Code of Federal Regulations is recodified on July 1. This rule, which becomes effective June 2, 2011, makes technical and editorial corrections throughout Title 33. This rule does not create any substantive requirements.

### III. Basis and Purpose

This rule amends 33 CFR part 1 to reflect changes in agency organization by removing § 1.01–60(a)(1)(ii) and combining § 1.01–60(a)(1)(i) with § 1.01–60(a)(1). Because the Coast Guard is no longer a component of the Department of Transportation (DOT), DOT Order 5610.1C (Procedures for Considering Environmental Impacts) no longer applies.

This rule revises 33 CFR part 27. The Coast Guard is adjusting fines and other civil monetary penalties to reflect the impact of inflation. These adjustments are made in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and implement the provisions of these statutes. These statutes require the Coast Guard to periodically adjust the civil monetary penalties for inflation by a method that is specifically prescribed within these statutes and which allows no discretion. The statutory method specifies the inflation measure to be used, the method for the calculation of the inflation adjustment, and the method for the numerical rounding of the results. The last inflation adjustments were made in 2010.

The changes in Civil Penalties for calendar year 2011 are based on the change in CPI–U from June 2009 to June 2010. The recorded change in CPI–U during that period was 1.05%. Because of the small change in CPI–U and the required rules for rounding, there was no change to any of the maximum penalty amounts from the previous adjustment.

This rule amends § 115.05 by replacing the term "builder" with the term "applicant" to clarify the Coast Guard's intent and make the affected provision consistent with other provisions in this section and other sections of part 115. This rule also corrects grammatical errors and details established requirements regarding the information needed on the plan sheets that accompany a bridge permit request. This rule removes § 115.50(d) because the information it provides is already explained throughout the section.

This rule amends 33 CFR part 117 to correct the names of the S14 Bridge and the S1 Bridge and to provide an updated phone number to the Kansas City Southern automated bridge. Also "Pelican Island Causeway" is removed from the title of § 117.977 and the section is redesignated to follow the alphabetical order of state waterways set out in this subpart.

This rule amends parts 135, 140, 148, and 150 of Title 33 with an organizational name change from the Minerals Management Service (MMS) to the Bureau of Ocean Energy Management Regulation and Enforcement (BOEMRE).

This rule amends paragraph 161.15(a) to correct a typographical error that erroneously omitted the words "within a". The correction to the section is not substantive and does not impose any new requirement, but clarifies the meaning of this portion of part 161.

This rule amends 33 CFR part 164 to remove LORAN C from the list of options for vessel electronic position fixing devices. Removing LORAN C from 33 CFR part 164 will have no substantive effect on the public because the use of LORAN C has not been supported by the Coast Guard since February 2010, and this section is no longer applicable.

This rule amends Title 33 to correct latitude/longitude coordinates of the Galveston Entrance Anchorage Areas in part 166 and the Chesapeake Bay: Eastern approach in part 167.

This rule amends Title 33 to update internal Coast Guard office designations as well as certain personnel titles. Changes in personnel titles included in this rule are only technical revisions reflecting changes in agency procedure and organization, and do not indicate new authorities.

This rule amends Title 33 to update various physical addresses for Coast Guard offices as well as those offices' contact information.

Finally, this rule corrects non-substantive, typographical errors throughout Title 33.

## IV. Regulatory Analyses

We developed this 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.

### *A. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Because this rule involves non-substantive changes and internal agency practices and procedures, it will not impose any additional costs on the public.

### *B. Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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.

We estimate that the cost of this rule is minimal and should have little or no impact on small entities because the provisions of this rule are technical and non-substantive, and will have no substantive effect on the public and will impose no additional costs. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

### *C. Collection of Information*

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

### *D. 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 rule under that Order and have determined that it does not have implications for federalism.

### *E. Unfunded Mandates Reform Act*

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

### *F. Taking of Private Property*

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

### *G. Civil Justice Reform*

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

### *H. Protection of Children*

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

### *I. Indian Tribal Governments*

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

### *J. Energy Effects*

We have analyzed this 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.

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

### *L. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. This rule involves regulations which are editorial, procedural, such as those updating addresses or establishing application procedures. An environmental analysis checklist and a categorical exclusion determination are

available in the docket where indicated under **ADDRESSES**.

**List of Subjects**

*33 CFR Part 1*

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

*33 CFR Part 27*

Administrative practice and procedure, Penalties.

*33 CFR Part 96*

Administrative practice and procedure, Marine safety, Reporting and recordkeeping requirements, Vessels.

*33 CFR Part 101*

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

*33 CFR Part 107*

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

*33 CFR Part 115*

Administrative practice and procedure, Bridges, Reporting and recordkeeping requirements.

*33 CFR Part 117*

Bridges.

*33 CFR Part 135*

Administrative practice and procedure, Continental shelf, Insurance, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 140*

Continental shelf, Investigations, Marine safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements.

*33 CFR Part 148*

Administrative practice and procedure, Environmental protection, Harbors, Petroleum.

*33 CFR Part 150*

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 151*

Administrative practice and procedure, Oil pollution Penalties, Reporting and recordkeeping requirements, Water pollution control.

*33 CFR Part 160*

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

*33 CFR Part 161*

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

*33 CFR Part 162*

Navigation (water), Waterways.

*33 CFR Part 164*

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

*33 CFR Part 166*

Anchorage grounds, Marine safety, Navigation (water), Waterways.

*33 CFR Part 167*

Harbors, Marine safety, Navigation (water), Waterways.

*33 CFR Part 169*

Endangered and threatened species, Marine mammals, Navigation (water), Radio, Reporting and recordkeeping requirements, Vessels, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 1, 27, 96, 101, 107, 115, 117, 135, 140, 148, 150, 151, 160, 161, 162, 164, 166, 167, and 169.

## PART 1—GENERAL PROVISIONS

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

**Authority:** 14 U.S.C. 633; 33 U.S.C. 401, 491, 525, 1321, 2716, and 2716a; 42 U.S.C. 9615; 49 U.S.C. 322; Department of Homeland Security Delegation No. 0170.1; section 1.01–70 also issued under the authority of E.O. 12580, 3 CFR, 1987 Comp., p. 193; and sections 1.01–80 and 1.01–85 also issued under the authority of E.O. 12777, 3 CFR, 1991 Comp., p. 351.

■ 2. In § 1.01–60, revise paragraph (a)(1) to read as follows:

**§ 1.01–60 Delegations for issuance of bridge permits.**

(a) * * *

(1) Those that require an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 *et seq.*) and all implementing regulations, orders, and instructions.

* * * * *

## PART 27—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 3. The authority citation for part 27 continues to read as follows:

**Authority:** Secs. 1–6, Public Law 101–410, 104 Stat. 890, as amended by Sec. 31001(s)(1), Public Law 104–134, 110 Stat. 1321 (28 U.S.C. 2461 note); Department of Homeland Security Delegation No. 0170.1, sec. 2 (106).

■ 4. Revise § 27.3 to read as follows:

**§ 27.3 Penalty Adjustment Table.**

Table 1 identifies the statutes administered by the Coast Guard that authorize a civil monetary penalty. The "adjusted maximum penalty" is the maximum penalty authorized by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, as determined by the Coast Guard.

TABLE 1—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

| U.S. Code citation | Civil monetary penalty description | 2011 Adjusted maximum penalty amount ($) |
|---|---|---|
| *14 U.S.C. 88(c)* | Saving Life and Property | 8,000 |
| *14 U.S.C. 645(i)* | Confidentiality of Medical Quality Assurance Records (first offense) | 4,000 |
| *14 U.S.C. 645(i)* | Confidentiality of Medical Quality Assurance Records (subsequent offenses) | 30,000 |
| *16 U.S.C. 4711(g)(1)* | Aquatic Nuisance Species in Waters of the United States | 35,000 |
| *19 U.S.C. 70* | Obstruction of Revenue Officers by Masters of Vessels | 3,000 |
| *19 U.S.C. 70* | Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty | 700 |
| *19 U.S.C. 1581(d)* | Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge (1) | 5,000 |
| *19 U.S.C. 1581(d)* | Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge—Minimum Penalty (1). | 1,000 |

TABLE 1—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

| U.S. Code citation | Civil monetary penalty description | 2011 Adjusted maximum penalty amount ($) |
|---|---|---|
| *33 U.S.C. 471* | Anchorage Ground/Harbor Regulations General | 110 |
| *33 U.S.C. 474* | Anchorage Ground/Harbor Regulations St. Mary's river | 300 |
| *33 U.S.C. 495(b)* | Bridges/Failure to Comply with Regulations (2) | 25,000 |
| *33 U.S.C. 499(c)* | Bridges/Drawbridges (2) | 25,000 |
| *33 U.S.C. 502(c)* | Bridges/Failure to Alter Bridge Obstructing Navigation (2) | 25,000 |
| *33 U.S.C. 533(b)* | Bridges/Maintenance and Operation (2) | 25,000 |
| *33 U.S.C. 1208(a)* | Bridge to Bridge Communication; Master, Person in Charge or Pilot | 800 |
| *33 U.S.C. 1208(b)* | Bridge to Bridge Communication; Vessel | 800 |
| *33 U.S.C. 1232(a)* | PWSA Regulations | 40,000 |
| *33 U.S.C. 1236(b)* | Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge | 8,000 |
| *33 U.S.C. 1236(c)* | Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel | 8,000 |
| *33 U.S.C. 1236(d)* | Vessel Navigation: Regattas or Marine Parades; Other Persons | 3,000 |
| *33 U.S.C. 1319* | Pollution Prevention | 40,000 |
| *33 U.S.C. 1319(2)(A)* | Pollution Prevention (per violation) | 15,000 |
| *33 U.S.C. 1319(2)(A)* | Pollution Prevention (Maximum—repeated violations) | 40,000 |
| *33 U.S.C. 1319(2)(B)* | Pollution Prevention (per day of violation) | 15,000 |
| *33 U.S.C. 1319(2)(B)* | Pollution Prevention (Maximum—repeated violations) | 190,000 |
| *33 U.S.C. 1321(b)(6)(B)(i)* | Oil/Hazardous Substances: Discharges (Class I per violation) | 15,000 |
| *33 U.S.C. 1321(b)(6)(B)(i)* | Oil/Hazardous Substances: Discharges (Class I total under paragraph) | 40,000 |
| *33 U.S.C. 1321(b)(6)(B)(ii)* | Oil/Hazardous Substances: Discharges (Class II per day of violation) | 15,000 |
| *33 U.S.C. 1321(b)(6)(B)(ii)* | Oil/Hazardous Substances: Discharges (Class II total under paragraph) | 190,000 |
| *33 U.S.C. 1321(b)(7)(A)* | Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment | 40,000 |
| *33 U.S.C. 1321(b)(7)(A)* | Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment. | 1,100 |
| *33 U.S.C. 1321(b)(7)(B)* | Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment). | 40,000 |
| *33 U.S.C. 1321(b)(7)(C)* | Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment). | 40,000 |
| *33 U.S.C. 1321(b)(7)(D)* | Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment. | 4,000 |
| *33 U.S.C. 1321(b)(7)(D)* | Oil/Hazardous Substances: Discharges, Gross Negligence—Minimum Penalty (Judicial Assessment). | 130,000 |
| *33 U.S.C. 1322(j)* | Marine Sanitation Devices; Operating | 3,000 |
| *33 U.S.C. 1322(j)* | Marine Sanitation Devices; Sale or Manufacture | 8,000 |
| *33 U.S.C. 1608(a)* | International Navigation Rules; Operator | 8,000 |
| *33 U.S.C. 1608(b)* | International Navigation Rules; Vessel | 8,000 |
| *33 U.S.C. 1908(b)(1)* | Pollution from Ships; General | 40,000 |
| *33 U.S.C. 1908(b)(2)* | Pollution from Ships; False Statement | 8,000 |
| *33 U.S.C. 2072(a)* | Inland Navigation Rules; Operator | 8,000 |
| *33 U.S.C. 2072(b)* | Inland Navigation Rules; Vessel | 8,000 |
| *33 U.S.C. 2609(a)* | Shore Protection; General | 40,000 |
| *33 U.S.C. 2609(b)* | Shore Protection; Operating Without Permit | 15,000 |
| *33 U.S.C. 2716a(a)* | Oil Pollution Liability and Compensation | 40,000 |
| *42 U.S.C. 9609(a)* | Hazardous Substances, Releases, Liability, Compensation (Class I) | 35,000 |
| *42 U.S.C. 9609(b)* | Hazardous Substances, Releases, Liability, Compensation (Class II) | 35,000 |
| *42 U.S.C. 9609(b)* | Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense) | 100,000 |
| *42 U.S.C. 9609(c)* | Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment) | 35,000 |
| *42 U.S.C. 9609(c)* | Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense). | 100,000 |
| *46 U.S.C. App 1505(a)(2)* | Safe Containers for International Cargo | 8,000 |
| *46 U.S.C. App 1712(a)* | International Ocean Commerce Transportation—Common Carrier Agreements per violation | 6,000 |
| *46 U.S.C. App 1712(a)* | International Ocean Commerce Transportation—Common Carrier Agreements per violation—Willfull violation. | 30,000 |
| *46 U.S.C. App 1712(b)* | International Ocean Commerce Transportation—'Common Carrier Agreements—Fine for tariff violation (per shipment). | 60,000 |
| *46 U.S.C. App 1805(c)(2)* | Suspension of Passenger Service | 70,000 |
| *46 U.S.C. 2110(e)* | Vessel Inspection or Examination Fees | 8,000 |
| *46 U.S.C. 2115* | Alcohol and Dangerous Drug Testing | 7,000 |
| *46 U.S.C. 2302(a)* | Negligent Operations: Recreational Vessels | 6,000 |
| *46 U.S.C. 2302(a)* | Negligent Operations: Other Vessels | 30,000 |
| *46 U.S.C. 2302(c)(1)* | Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug | 7,000 |
| *46 U.S.C. 2306(a)(4)* | Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent | 8,000 |
| *46 U.S.C. 2306(b)(2)* | Vessel Reporting Requirements: Master | 1,100 |
| *46 U.S.C. 3102(c)(1)* | Immersion Suits | 8,000 |
| *46 U.S.C. 3302(i)(5)* | Inspection Permit | 1,100 |
| *46 U.S.C. 3318(a)* | Vessel Inspection; General | 8,000 |
| *46 U.S.C. 3318(g)* | Vessel Inspection; Nautical School Vessel | 8,000 |
| *46 U.S.C. 3318(h)* | Vessel Inspection; Failure to Give Notice IAW 3304(b) | 1,100 |
| *46 U.S.C. 3318(i)* | Vessel Inspection; Failure to Give Notice IAW 3309(c) | 1,100 |
| *46 U.S.C. 3318(j)(1)* | Vessel Inspection; Vessel ≥ 1600 Gross Tons | 15,000 |

TABLE 1—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

| U.S. Code citation | Civil monetary penalty description | 2011 Adjusted maximum penalty amount ($) |
|---|---|---|
| *46 U.S.C. 3318(j)(1)* | Vessel Inspection; Vessel < 1600 Gross Tons | 3,000 |
| *46 U.S.C. 3318(k)* | Vessel Inspection; Failure to Comply with 3311(b) | 15,000 |
| *46 U.S.C. 3318(l)* | Vessel Inspection; Violation of 3318(b)–3318(f) | 8,000 |
| *46 U.S.C. 3502(e)* | List/count of Passengers | 110 |
| *46 U.S.C. 3504(c)* | Notification to Passengers | 15,000 |
| *46 U.S.C. 3504(c)* | Notification to Passengers; Sale of Tickets | 800 |
| *46 U.S.C. 3506* | Copies of Laws on Passenger Vessels; Master | 300 |
| *46 U.S.C. 3718(a)(1)* | Liquid Bulk/Dangerous Cargo | 40,000 |
| *46 U.S.C. 4106* | Uninspected Vessels | 8,000 |
| *46 U.S.C. 4311(b)(1)* | Recreational Vessels (maximum for related series of violations) | 300,000 |
| *46 U.S.C. 4311(b)(1)* | Recreational Vessels; Violation of 4307(a) | 6,000 |
| *46 U.S.C. 4311(c)* | Recreational Vessels | 1,100 |
| *46 U.S.C. 4507* | Uninspected Commercial Fishing Industry Vessels | 8,000 |
| *46 U.S.C. 4703* | Abandonment of Barges | 1,100 |
| *46 U.S.C. 5116(a)* | Load Lines | 8,000 |
| *46 U.S.C. 5116(b)* | Load Lines; Violation of 5112(a) | 15,000 |
| *46 U.S.C. 5116(c)* | Load Lines; Violation of 5112(b) | 8,000 |
| *46 U.S.C. 6103(a)* | Reporting Marine Casualties | 35,000 |
| *46 U.S.C. 6103(b)* | Reporting Marine Casualties; Violation of 6104 | 8,000 |
| *46 U.S.C. 8101(e)* | Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement | 1,100 |
| *46 U.S.C. 8101(f)* | Manning of Inspected Vessels | 15,000 |
| *46 U.S.C. 8101(g)* | Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by USCG | 15,000 |
| *46 U.S.C. 8101(h)* | Manning of Inspected Vessels; Freight Vessel < 100 GT, Small Passenger Vessel, or Sailing School Vessel. | 1,100 |
| *46 U.S.C. 8102(a)* | Watchmen on Passenger Vessels | 1,100 |
| *46 U.S.C. 8103(f)* | Citizenship Requirements | 800 |
| *46 U.S.C. 8104(i)* | Watches on Vessels; Violation of 8104(a) or (b) | 15,000 |
| *46 U.S.C. 8104(j)* | Watches on Vessels; Violation of 8104(c), (d), (e), or (h) | 15,000 |
| *46 U.S.C. 8302(e)* | Staff Department on Vessels | 110 |
| *46 U.S.C. 8304(d)* | Officer's Competency Certificates | 110 |
| *46 U.S.C. 8502(e)* | Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge. | 15,000 |
| *46 U.S.C. 8502(f)* | Coastwise Pilotage; Individual | 15,000 |
| *46 U.S.C. 8503* | Federal Pilots | 40,000 |
| *46 U.S.C. 8701(d)* | Merchant Mariners Documents | 800 |
| *46 U.S.C. 8702(e)* | Crew Requirements | 15,000 |
| *46 U.S.C. 8906* | Small Vessel Manning | 35,000 |
| *46 U.S.C. 9308(a)* | Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge. | 15,000 |
| *46 U.S.C. 9308(b)* | Pilotage: Great Lakes; Individual | 15,000 |
| *46 U.S.C. 9308(c)* | Pilotage: Great Lakes; Violation of 9303 | 15,000 |
| *46 U.S.C. 10104(b)* | Failure to Report Sexual Offense | 8,000 |
| *46 U.S.C. 10314(a)(2)* | Pay Advances to Seamen | 800 |
| *46 U.S.C. 10314(b)* | Pay Advances to Seamen; Remuneration for Employment | 800 |
| *46 U.S.C. 10315(c)* | Allotment to Seamen | 800 |
| *46 U.S.C. 10321* | Seamen Protection; General | 7,000 |
| *46 U.S.C. 10505(a)(2)* | Coastwise Voyages: Advances | 7,000 |
| *46 U.S.C. 10505(b)* | Coastwise Voyages: Advances; Remuneration for Employment | 7,000 |
| *46 U.S.C. 10508(b)* | Coastwise Voyages: Seamen Protection; General | 7,000 |
| *46 U.S.C. 10711* | Effects of Deceased Seamen | 300 |
| *46 U.S.C. 10902(a)(2)* | Complaints of Unfitness | 800 |
| *46 U.S.C. 10903(d)* | Proceedings on Examination of Vessel | 110 |
| *46 U.S.C. 10907(b)* | Permission to Make Complaint | 800 |
| *46 U.S.C. 11101(f)* | Accommodations for Seamen | 800 |
| *46 U.S.C. 11102(b)* | Medicine Chests on Vessels | 800 |
| *46 U.S.C. 11104(b)* | Destitute Seamen | 110 |
| *46 U.S.C. 11105(c)* | Wages on Discharge | 800 |
| *46 U.S.C. 11303(a)* | Log Books; Master Failing to Maintain | 300 |
| *46 U.S.C. 11303(b)* | Log Books; Master Failing to Make Entry | 300 |
| *46 U.S.C. 11303(c)* | Log Books; Late Entry | 200 |
| *46 U.S.C. 11506* | Carrying of Sheath Knives | 80 |
| *46 U.S.C. 12151(a)* | Documentation of Vessels (violation per day) | 15,000 |
| *46 U.S.C. 12151(c)* | Engaging in Fishing After Falsifying Eligibility (fine per day) | 130,000 |
| *46 U.S.C. 12309(a)* | Numbering of Undocumented Vessels—Willfull violation | 6,000 |
| *46 U.S.C. 12309(b)* | Numbering of Undocumented Vessels | 1,100 |
| *46 U.S.C. 12507(b)* | Vessel Identification System | 15,000 |
| *46 U.S.C. 14701* | Measurement of Vessels | 30,000 |
| *46 U.S.C. 14702* | Measurement; False Statements | 30,000 |
| *46 U.S.C. 31309* | Commercial Instruments and Maritime Liens | 15,000 |
| *46 U.S.C. 31330(a)(2)* | Commercial Instruments and Maritime Liens; Mortgagor | 15,000 |

TABLE 1—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

| U.S. Code citation | Civil monetary penalty description | 2011 Adjusted maximum penalty amount ($) |
|---|---|---|
| *46 U.S.C. 31330(b)(2)* | Commercial Instruments and Maritime Liens; Violation of 31329 | 35,000 |
| *46 U.S.C. 70119* | Port Security | 30,000 |
| *46 U.S.C. 70119(b)* | Port Security—Continuing Violations | 50,000 |
| *49 U.S.C. 5123(a)(1)* | Hazardous Materials: Related to Vessels—Maximum Penalty | 60,000 |
| *49 U.S.C. 5123(a)(1)* | Hazardous Materials: Related to Vessels—Minimum Penalty | 300 |
| *49 U.S.C. 5123(a)(2)* | Hazardous Materials: Related to Vessels—Penalty from Fatalities, Serious Injuries/Illness or substantial Damage to Property. | 110,000 |

**Note:** The changes in Civil Penalties for calendar year 2011, shown above, are based on the change in CPI–U from June 2009 to June 2010. The recorded change in CPI–U during that period was 1.05%. Because of the small change in CPI–U and the required rules for rounding, there was no change to any of the maximum penalty amounts from the previous adjustment.

(1) Enacted under the Tariff Act of 1930, exempt from inflation adjustments.

(2) These penalties increased in accordance with the statute to $10,000 in 2005, $15,000 in 2006, $20,000 in 2007, and $25,000 in 2008 and thereafter.

## PART 96—RULES FOR THE SAFE OPERATION OF VESSELS AND SAFETY MANAGEMENT SYSTEMS

■ 5. The authority citation for part 96 continues to read as follows:

**Authority:** 46 U.S.C. 3201 et seq.; 46 U.S.C. 3103; 46 U.S.C. 3316, 33 U.S.C. 1231; 49 CFR 1.45, 49 CFR 1.46.

### § 96.495 [Amended]

■ 6. In § 96.495(a), following the words "Commandant (CG–543)", add the words ",2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126".

## PART 101—MARITIME SECURITY: GENERAL

■ 7. The authority citation for part 101 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

### § 101.105 [Amended]

■ 8. In § 101.105, in the definition of "Secure area", in the third sentence, following the words "subchapter located in", remove the words "the Commonwealth of the Northern Mariana Islands and".

## PART 107—NATIONAL VESSEL AND FACILITY CONTROL MEASURES AND LIMITED ACCESS AREAS

■ 9. The authority citation for part 107 continues to read as follows:

**Authority:** 50 U.S.C. 191, 192, 194, 195; 14 U.S.C. 141; Presidential Proclamation 6867, 61 FR 8843, 3 CFR, 1996 Comp., P. 8; Presidential Proclamation 7757, 69 FR 9515 (March 1, 2004); Secretary of Homeland Security Order 2004–001; Department of Homeland Security Delegation No. 0170.1; and 33 CFR 1.05–1.

### § 107.220 [Amended]

■ 10. Amend § 107.220 as follows:

■ a. In paragraph (a): remove the word "Operations" wherever it appears, and add, in its place, the word "Response"; remove the word "(o)" wherever it appears, and add, in its place, the word "(dr)"; following the words "telephone (305) 415–", remove the number "6920", and add, in its place, the number "6800"; and following the words "facsimile (305) 415–", remove the number "6925", and add, in its place, the number "6809"; and

■ b. In paragraph (e), following the words "Guard District Commander", remove the word "(o)", and add, in its place, the word "(dr)".

## PART 115—BRIDGE LOCATIONS AND CLEARANCES; ADMINISTRATIVE PROCEDURES

■ 11. The authority citation for part 115 continues to read as follows:

**Authority:** c. 425, sec. 9, 30 Stat. 1151 (33 U.S.C. 401); c. 1130, sec 1, 34 Stat. 84 (33 U.S.C. 491); sec. 5, 28 Stat. 362, as amended (33 U.S.C. 499); sec. 11, 54 Stat. 501, as amended (33 U.S.C. 521); c. 753, Title V, sec. 502, 60 Stat. 847, as amended (33 U.S.C. 525); 86 Stat. 732 (33 U.S.C. 535); 14 U.S.C. 633; sec. g(6), 80 Stat. 941 (49 U.S.C. 1655(g)); 49 CFR 1.46(c).

### § 115.05 [Amended]

■ 12. In § 115.05, in the last sentence, remove the word "Especial" and add, in its place, the word "Special"; and, following the words "right of the", remove the word "builder" and add, in its place, the word "applicant".

■ 13. In § 115.50, revise paragraph (a), remove paragraph (d), redesignate paragraphs (e) through (k) as paragraphs (d) through (j), and revise newly redesignated paragraphs (f), (h)(1), and (i) to read as follows:

### § 115.50 Application for bridge permits.

(a) *Application.* An application for authorization to construct a bridge across navigable waters of the United States must include the name, address, and telephone number of the applicant; the waterway and location of the bridge; a citation to the applicable act of Congress; when appropriate, a citation to the State legislation authorizing the bridge; a map of the location and plans of the bridge showing the features which affect navigation; and papers to establish the identity of the applicant.

* * * * *

(f) *Plans.* One reproducible set of plans must be submitted with the application, on which the location of the work and the essential features covered by the application will be identified. Each drawing must have a title block located in the lower right-hand corner identifying the applicant/agent and bridge owner; the waterway; the milepoint on the waterway of the bridge location; the city, county, and state of the bridge location; the name of the bridge; the date of the plans; the sheet number; and the total number of sheets in the set.

* * * * *

(h) *Special instructions.* (1) Vertical and horizontal distances will be shown using bar scales. The north and south line will be indicated by a meridian arrow. Soundings and elevations will be shown in feet and referred to the established Government datum plane at the locality.

* * * * *

(i) *Structural details.* Only those should be shown which are needed to illustrate the effect of the proposed structure on navigation. If the bridge is to be equipped with a draw, the latter will be shown in two positions: Closed and open. In those cases, the vertical and horizontal clearances shall be

indicated in both the closed and open positions.

* * * * *

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 14. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

### § 117.241 [Amended]

■ 15. In § 117.241, following the words "draw of the", remove the words "S14 Bridge", and add, in their place, the words "Route 1/Rehoboth Blvd. Bridge".

### § 117.438 [Amended]

■ 16. In § 117.438(a), following the words "draw of the", remove the words "S1 bridge", and add, in their place, the words "LA1 bridge".

### § 117.971 [Amended]

■ 17. In § 117.971(a)(1)(i), following the words "Telephone at", remove the number "1–877–829–6295" and add, in its place, the number "1–800–892–6295".

### § 117.977 [Redesignated as § 117.966]

■ 18a. Redesignate § 117.977 as § 117.966.

■ 18b. In newly redesignated § 117.966, revise the section heading to read as follows:

### § 117.966 Galveston Channel.

* * * * *

## PART 135—OFFSHORE OIL POLLUTION COMPENSATION FUND

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

**Authority:** 33 U.S.C. 2701–2719; E.O. 12777, 56 FR 54757; Department of Homeland Security Delegation No. 0170.1, para. 2(80).

### § 135.103 [Amended]

■ 20. In § 135.103(b), following the words "criteria of the", remove the words "Minerals Management Service" and add, in their place, the words "Bureau of Ocean Energy Management, Regulation and Enforcement".

## PART 140—GENERAL

■ 21. The authority citation for part 140 continues to read as follows:

**Authority:** 43 U.S.C. 1333, 1348, 1350, 1356; Department of Homeland Security Delegation No. 0170.1.

■ 22. In § 140.10, remove the definition for "Minerals Management Service inspector or MMS inspector" and add, in alphabetical order, the definition for "Bureau of Ocean Energy Management, Regulation and Enforcement inspector or BOEMRE inspector" to read as follows:

### § 140.10 Definitions.

* * * * *

*Bureau of Ocean Energy Management, Regulation and Enforcement inspector or BOEMRE inspector* means an individual employed by the Bureau of Ocean Energy Management, Regulation and Enforcement who inspects fixed OCS facilities on behalf of the Coast Guard to determine whether the requirements of this subchapter are met.

* * * * *

### § 140.101 [Amended]

■ 23. Amend § 140.101 as follows:

■ a. In the section heading, remove the words "Minerals Management Service" and add, in their place, the words "Bureau of Ocean Energy Management, Regulation and Enforcement";

■ b. In paragraph (b), remove the words "Minerals Management Service (MMS)" and add, in their place, the words "Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)"; and

■ c. In paragraphs (c) and (d), remove the word "MMS" wherever it appears and add, in its place, the word "BOEMRE".

### § 140.103 [Amended]

■ 24. Amend § 140.103 as follows:

■ a. In paragraph (b), following the words "marine inspectors and", remove the words "Minerals Management Service (MMS)" and add, in their place, the words "Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)"; and

■ b. In paragraph (c), remove the word "MMS" wherever it appears, and add, in its place, the word "BOEMRE".

## PART 148—DEEPWATER PORTS: GENERAL

■ 25. The authority citation for part 148 continues to read as follows:

**Authority:** 33 U.S.C. 1504; Department of Homeland Security Delegation No. 0170.1 (75).

### § 148.3 [Amended]

■ 26. In § 148.3(d), following the words "Corps of Engineers," remove the words "Minerals Management Service (MMS)" and add, in their place, the words "Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)".

### § 148.105 [Amended]

■ 27. In § 148.105(o), following the words "established by the", remove the words "Minerals Management Service" and add, in their place, the words "Bureau of Ocean Energy Management, Regulation and Enforcement".

## PART 150—DEEPWATER PORTS: OPERATIONS

■ 28. The authority citation for part 150 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), (m)(2); 33 U.S.C. 1509(a); E.O. 12777, sec. 2; E.O. 13286, sec. 34, 68 FR 10619; Department of Homeland Security Delegation No. 0170.1(70), (73), (75), (80).

### § 150.815 [Amended]

■ 29. In § 150.815(c), following the words "regulated by the", remove the words "Minerals Management Service" and add, in their place, the words "Bureau of Ocean Energy Management, Regulation and Enforcement".

### § 150.820 [Amended]

■ 30. In § 150.820(d), following the words "the nearest regional", remove the words "Minerals Management Service (MMS)" and add, in their place, the words "Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)"; and following the words "with an", remove the word "MMS" and add, in its place, the word "BOEMRE".

## PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 31. The authority citation for part 151 continues to read as follows:

**Authority:** 33 U.S.C. 1321, 1902, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); Pub. L. 108–293 (118 Stat. 1063), § 623; E.O. 12777, 3 CFR, 1991 Comp. p. 351; DHS Delegation No. 0170.1, sec. 2(77).

### Appendix to Subpart D [Amended]

■ 32. In the Appendix to Subpart D, in the last paragraph, remove the number "524", and add, in its place, the number "5224".

## PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

■ 33. The authority citation for part 160 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

**§ 160.7 [Amended]**

■ 34. In § 160.7(d), remove the words "Assistant Commandant for Prevention" wherever they appear, and add, in their place, the words "Assistant Commandant for Marine Safety, Security and Stewardship"; remove "(formerly known as the Assistant Commandant for Marine Safety, Security and Environmental Protection)"; and remove the number "7355" wherever it appears, and add, in its place, the number "7363".

## PART 161—VESSEL TRAFFIC MANAGEMENT

■ 35. The authority citation for part 161 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70119; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

**§ 161.15 [Amended]**

■ 36. In § 161.15(a), following the words "track vessel movements", add the words "within a".

## PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

■ 37. The authority citation for part 162 continues to read as follows:

**Authority:** 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.1.

**§ 162.20 [Amended]**

■ 38. In § 162.20(b), following the words "All vessels traversing", remove the word "in".

**§ 162.270 [Amended]**

■ 39. In § 162.270(b), following the words "unless specific permission", remove the word "of", and add, in its place, the word "to".

## PART 164—NAVIGATION SAFETY REGULATIONS

■ 40. The authority citation for part 164 continues to read as follows:

**Authority:** 33 U.S.C. 1222(5), 1223, 1231; 46 U.S.C. 2103, 3703; Department of Homeland Security Delegation No. 0170.1 (75). Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

**§ 164.03 [Amended]**

■ 41. In § 164.03(a), following the words "Navigation Systems Division (CG-", remove the number "5413", and add, in its place, the number "553"; and remove the number "7355" wherever it appears, and add, in its place, the number "7580".

**§ 164.38 [Amended]**

■ 42. In § 164.38, remove and reserve paragraph (d)(2).

■ 43. Revise § 164.41 to read as follows:

**§ 164.41 Electronic position fixing devices.**

(a) Each vessel calling at a port in the continental United States, including Alaska south of Cape Prince of Wales, except each vessel owned or bareboat chartered and operated by the United States, or by a state or its political subdivision, or by a foreign nation, and not engaged in commerce, must have a satellite navigation receiver with—

(1) Automatic acquisition of satellite signals after initial operator settings have been entered; and

(2) Position updates derived from satellite information during each usable satellite pass.

(b) A system that is found by the Commandant to meet the intent of the statements of availability, coverage, and accuracy for the U.S. Coastal Confluence Zone (CCZ) contained in the U.S. "Federal Radionavigation Plan" (Report No. DOD–NO 4650.4–P, I or No. DOT–TSC–RSPA–80–16, I). A person desiring a finding by the Commandant under this subparagraph must submit a written application describing the device to the Coast Guard Deputy Commander for Operations (CG–DCO), 2100 2nd St. SW., Stop 7471, Washington, DC 20593–7471. After reviewing the application, the Commandant may request additional information to establish whether or not the device meets the intent of the Federal Radionavigation Plan. Note: The Federal Radionavigation Plan is available from the National Technical Information Service, Springfield, Va. 22161, with the following Government Accession Numbers:

Vol 1, ADA 116468
Vol 2, ADA 116469
Vol 3, ADA 116470
Vol 4, ADA 116471

**§ 164.72 [Amended]**

■ 44. In § 164.72(a)(6), following the words "position-fixing device," remove the words "either a LORAN C receiver or".

## PART 166—SHIPPING SAFETY FAIRWAYS

■ 45. The authority citation for part 166 continues to read as follows:

**Authority:** 33 U.S.C. 1223; 49 CFR 1.46.

**§ 166.200 [Amended]**

■ 46. In § 166.200(d)(11), in the second table, in the first row and first column under "Latitude North", remove the text "9°", and add, in its place, the text "29°".

## PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

■ 47. The authority citation for part 167 continues to read as follows:

**Authority:** 33 U.S.C. 1223; Department of Homeland Security Delegation No. 0170.0.

**§ 167.202 [Amended]**

■ 48. In § 167.202(b), in the table, remove the text "36°56.80′N", and add, in its place, the text "36°56.90′N".

## PART 169—SHIP REPORTING SYSTEMS

■ 49. The authority citation for part 169 continues to read as follows:

**Authority:** 33 U.S.C. 1230(d), 1231; 46 U.S.C. 70115, Department of Homeland Security Delegation No. 0170.1.

**§ 169.15 [Amended]**

■ 50. In § 169.15(a), following the words "Navigation Systems (CG-", remove the number "54132", and add, in its place, the number "5532"; and remove the number "7581" wherever it appears, and add, in its place, the number "7580".

Dated: May 24, 2011.

**Kathryn Sinniger,**

*Chief, Office of Regulations and Administrative Law, United States Coast Guard.*

[FR Doc. 2011–13320 Filed 6–1–11; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2011–0442]**

## Drawbridge Operation Regulation; Nanticoke River, Seaford, DE

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 13 Bridge across the Nanticoke River, mile 39.6, at Seaford, DE. The deviation is necessary to accommodate the cleaning and painting of the bridge. This deviation restricts the availability to open the bridge during the approximate seven week project.

**DATES:** This deviation is effective from 12:01 a.m. on June 10, 2011 to 11:59 p.m. on July 24, 2011.

**ADDRESSES:** Documents mentioned in this preamble as being available in the

docket are part of docket USCG–2011–0442 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0442 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Lindsey Middleton, Bridge Management Specialist, Coast Guard; telephone 757–398–6629, e-mail *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** Marinis Bros. Inc., on behalf of Delaware Department of Transportation, has requested a temporary deviation from the current operating regulation of the SR 13 Bridge across the Nanticoke River, mile 39.6, at Seaford, DE. The requested deviation is to accommodate painting and cleaning of the bridge. The vertical clearance of this single-leaf bascule bridge is three feet at mean high water (MHW) in the closed position and unlimited in the open position. During this deviation period, the vertical clearance will be limited to one foot at MHW due to the scaffolding that will be used for the maintenance of the bridge. Monday through Friday from 7 a.m. until 6 p.m. the bridge is able to open if at least four hours of notice is given and from 6 p.m. to 7 a.m. the bridge will be left in the closed-to-navigation position. On Saturdays and Sundays and on July 4, 2011 the bridge will be left in the open position and vessels will be able to pass through at any time. The bridge will be able to open for emergencies if at least four hours of notice is given. There are no alternate routes available to vessels.

The current operating schedule for the bridge is set out in 33 CFR 117.243(b). In the months of June and July the regulation requires the bridge to open on signal, except from 6 p.m. to 8 a.m., if at least four hours notice is given.

Logs from June and July 2010 have shown that most of the openings were on the weekends and on July 4th and all of the openings were between the hours of 7 a.m. and 6 p.m. This deviation will have no impact for mariners traveling through the bridge on the weekends and on July 4th because the bridge will be left in the open position on these days. Mariners transiting through the bridge on weekdays should have minimal delay given that the bridge can open for vessels if at least four hours notice is given. The majority of the vessel traffic is recreational boaters. The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners so that mariners can arrange their transits to minimize any impact caused by the temporary deviation. The Coast Guard will also require the bridge owner to post signs on either side of the bridge notifying mariners of the temporary regulation change.

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

Dated: May 23, 2011.

**Waverly W. Gregory, Jr.,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2011–13643 Filed 6–1–11; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0188]**

**RIN 1625–AA00**

## Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Sault Sainte Marie Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is adding regulations requiring safety zones in the Captain of the Port Sault Sainte Marie zone. This rule will establish safety zones that will restrict vessels from certain portions of water areas within the Sector Sault Sainte Marie Captain of the Port zone. These safety zones are necessary to protect spectators, participants, and vessels from the hazards associated with various maritime events.

**DATES:** This rule July 5, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0188 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0188 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail BMC Gregory Ford, U.S. Coast Guard, Sector Sault Sainte Marie, telephone 906–253–3222, e-mail at *Gregory.C.Ford@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On April 18, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Events requiring safety zones in the Captain of the Port Sault Sainte Marie zone, in the **Federal Register** (76 FR 21677). We received 0 public submissions commenting on this rule. No public meeting was requested, and none was held.

### Background and Purpose

This rule will add 33 CFR 165.918 Safety Zones; Annual Events requiring safety zones in the Captain of the Port Sault Sainte Marie zone. Many of these events recur in the same location on or about the same date each year. Also, these events pose hazards to the public. Such hazards include obstructions to navigable channels, explosive dangers associated with fireworks, debris falling into the water, and general congestion of waterways. To minimize these and other hazards, this rule will establish twenty safety zones, each related to a specific recurring marine event.

### Discussion of Comments and Changes

The Coast Guard received 0 public submissions commenting on this rule.

### Discussion of Rule

This rule and its associated safety zones are necessary to ensure the safety of vessels and people during each of the annual marine events discussed herein. Although this rule will remain in effect year round, the safety zones will be enforced only immediately before, during, and after each corresponding event.

The Captain of the Port Sault Sainte Marie will notify the public when these safety zones will be enforced. In keeping with 33 CFR 165.7(a), the Captain of the Port Sault Sainte Marie will use all appropriate means to notify the affected

segments of the public. This will include, as practicable, Broadcast Notice to Mariners, and Local Notice to Mariners. The Captain of the Port will, as practicable, issue a Broadcast Notice to Mariners notifying the public when any enforcement period is cancelled.

Entry into, transiting, or anchoring within each of the below safety zones is prohibited unless authorized by the Captain of the Port Sault Sainte Marie or his or her designated representative. All persons and vessels permitted to enter one of the safety zones established by this rule shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative. The Captain of the Port or his or her designated representative may be contacted via VHF Channel 16.

**Regulatory Analyses**

We developed this 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 rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones created by this rule will be relatively small and enforced for a relatively short time. Also, each safety zone is designed to minimize its impact on navigable waters. Furthermore, each safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movement within any particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through each safety zone when permitted by the Captain of the Port. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule would not have a significant economic impact on a substantial number of small entities. On April 18, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Events requiring safety zones in the Captain of the Port Sault Sainte Marie zone, in the **Federal Register** (76 FR 21677). The Coast Guard received 0 public submissions commenting on the impact to small entities by this rule. There have been no changes made to the rule as proposed. This rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in any one of the below established safety zones while the safety zone is being enforced. Each of the safety zones, with one exception, will be in effect only once per year. Furthermore, these safety zones have been designed to allow traffic to pass safely around each zone. Moreover, vessels will be allowed to pass through each zone at the discretion of the Captain of the Port.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. On April 18, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Events requiring safety zones in the Captain of the Port Sault Sainte Marie zone, in the **Federal Register** (76 FR 21677). The Coast Guard received 0 public submissions commenting on the proposed rule.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. On April 18, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Events requiring safety zones in the Captain of the Port Sault Sainte Marie zone, in the **Federal Register** (76 FR 21677). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

**Taking of Private Property**

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. On April 18, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Events requiring safety zones in the Captain of the Port Sault Sainte Marie zone, in the **Federal Register** (76 FR 21677). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. On April 18, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Events requiring safety zones in the Captain of the Port Sault Sainte Marie zone, in the **Federal Register** (76 FR 21677). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children. On April 18, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Events requiring safety zones in the Captain of the Port Sault Sainte Marie zone, in the **Federal Register** (76 FR 21677). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

**Indian Tribal Governments**

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. On April 18, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Events requiring safety zones in the Captain of the Port Sault Sainte Marie zone, in the **Federal Register** (76 FR 21677). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

**Energy Effects**

We have analyzed this 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. On April 18, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Events requiring safety zones in the Captain of the Port Sault Sainte Marie zone, in the **Federal Register** (76 FR 21677). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

**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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. On April 18, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Events requiring safety zones in the Captain of the Port Sault Sainte Marie zone, in the **Federal Register** (76 FR 21677). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because it involves the establishment of a safety zone. A final environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 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 § 165.918 to read as follows:

**§ 165.918 Safety Zones; Annual events requiring safety zones in the Captain of the Port Sault Sainte Marie zone.**

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *Marquette Fourth of July Celebration Fireworks; Marquette, MI:*

(i) *Location.* All U.S. navigable waters of Marquette Harbor within a 1000-foot radius of the fireworks launch site, centered approximately 1250 feet south of the Mattson Park Bulkhead Dock and 450 feet east of Ripley Rock, at position 46°32′21.7″N, 087°23′07.60″W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced each year on July 4 from 9 p.m. until 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5 from 9 p.m. until 11 p.m.

(2) *Munising Fourth of July Celebration Fireworks; Munising, MI:*

(i) *Location.* All U.S. navigable waters of South Bay within a 600-foot radius from the fireworks launch site at the end of the Munising City Dock, centered in position: 46°24′50.08″N, 086°39′08.52″W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced each year on July 4 from 9 p.m. until 12:30 a.m. on July 5. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced on July 5 from 9 p.m. until 12:30 a.m. on July 6.

(3) *Grand Marais Splash-In; Grand Marais, MI:*

(i) *Location.* All U.S. navigable waters within the southern portion of West Bay bound to the north by a line beginning approximately 175 feet south-southeast of the Lake Street Boat Launch, extending 5280 feet to the east on a true bearing of 079 degrees. The eastern boundary will then be formed by a line drawn to the shoreline on a true bearing of 170 degrees. The western and southern boundaries of the zone will be bound by the shoreline of West Bay. The coordinates for this zone are as follows: 46°40′22.32″ N, 085°59′00.66″ W,

46°40′32.04″ N, 085°57′46.14″ W, and 46°40′19.68″ N, 085°57′43.08″ W [DATUM: NAD 83], with the West Bay shoreline forming the South and West boundaries of the zone.

(ii) *Enforcement Period.* Each year on the second to last Saturday in June from 2 p.m. until 5 p.m.

(4) *Sault Sainte Marie Fourth of July Celebration Fireworks; Sault Sainte Marie, MI:*

(i) *Location.* All U.S. navigable waters of the St. Marys River within a 750-foot radius around the eastern portion of the U.S. Army Corp of Engineers Soo Locks North East Pier, centered in position: 46°30′19.66″ N, 084°20′31.61″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced each year on July 4 from 9 p.m. until 11:30 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5 from 9 p.m. until 11:30 p.m.

(5) *St. Ignace Fourth of July Celebration Fireworks; St. Ignace, MI:*

(i) *Location.* All U.S. navigable waters of East Moran Bay within a 700-foot radius from the fireworks launch site at the end of the Arnold Transit Mill Slip, centered in position: 45°52′24.62″ N, 084°43′18.13″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced each year on July 4 from 9 p.m. until 11:30 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5 from 9 p.m. until 11:30 p.m.

(6) *Mackinac Island Fourth of July Celebration Fireworks; Mackinac Island, MI:*

(i) *Location.* All U.S. navigable waters of Lake Huron within a 500-foot radius of the fireworks launch site, centered approximately 1000 yards west of Round Island Passage Light, at position 45°50′34.92″ N, 084°37′38.16″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced each year on July 4 from 9 p.m. until 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5 from 9 p.m. until 11 p.m.

(7) *Festivals of Fireworks Celebration Fireworks; St. Ignace, MI:*

(i) *Location.* All U.S. navigable waters of East Moran Bay within a 700-foot radius from the fireworks launch site at the end of the Arnold Transit Mill Slip, centered in position: 45°52′24.62″ N, 084°43′18.13″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced each year on every Saturday following the 4th of July until the second Sunday in September from 9 p.m. to 11 p.m. If the fireworks are cancelled on Saturday due to inclement weather, then this section will be enforced on Sunday from 9 p.m. to 11 p.m.

(8) *Canada Day Celebration Fireworks; Sault Sainte Marie, MI:*

(i) *Location.* All U.S. navigable waters of the St. Marys River within a 1200-foot radius from the fireworks launch site, centered approximately 160 yards north of the U.S. Army Corp of Engineers Soo Locks North East Pier, at position 46°30′20.40″ N, 084°20′17.64″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced each year on July 1 from 9 p.m. until 11 p.m. If the July 1 fireworks are cancelled due to inclement weather, then this section will be enforced July 2 from 9 p.m. until 11 p.m.

(9) *Jordan Valley Freedom Festival Fireworks; East Jordan, MI:*

(i) *Location.* All U.S. navigable waters of Lake Charlevoix, near the City of East Jordan, within the arc of a circle with a 1000-foot radius from the fireworks launch site in position 45°09′18″ N, 085°07′48″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* Each year on Saturday of the third weekend of June from 9 p.m. until 11 p.m.

(10) *National Cherry Festival Fourth of July Celebration Fireworks; Traverse City, MI:*

(i) Location. All U.S. navigable waters of the West Arm of Grand Traverse Bay within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 44°46′12″ N, 085°37′06″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced each year on July 4 from 9 p.m. until 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5 from 9 p.m. until 11 p.m.

(11) *Harbor Springs Fourth of July Celebration Fireworks; Harbor Springs, MI:*

(i) *Location.* All U.S. navigable waters of Lake Michigan and Harbor Springs Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 45°25′30″ N, 084°59′06″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced each year on July 4 from 9 p.m. until 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5 from 9 p.m. until 11 p.m.

(12) *Bay Harbor Yacht Club Fourth of July Celebration Fireworks; Petoskey, MI:*

(i) *Location.* All U.S. navigable waters of Lake Michigan and Bay Harbor Lake within the arc of a circle with a 500-foot radius from the fireworks launch site located on a barge in position 45°21′50″ N, 085°01′37″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced each year on July 3 from 9 p.m. until 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this section will be enforced July 4 from 9 p.m. until 11 p.m.

(13) *Petoskey Fourth of July Celebration Fireworks; Petoskey, MI:*

(i) *Location.* All U.S. navigable waters of Lake Michigan and Petoskey Harbor, in the vicinity of Bay Front Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 45°22′40″ N, 084°57′30″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced each year on July 4 from 9 p.m. until 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5 from 9 p.m. until 11 p.m.

(14) *Boyne City Fourth of July Celebration Fireworks; Boyne City, MI:*

(i) *Location.* All U.S. navigable waters of Lake Charlevoix, in the vicinity of Veterans Park, within the arc of a circle with a 1400-foot radius from the fireworks launch site located in position 45°13′30″ N, 085°01′40″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced each year on July 4 from 9 p.m. until 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5 from 9 p.m. until 11 p.m.

(15) *National Cherry Festival Air Show; Traverse City, MI:*

(i) *Location.* All U.S. navigable waters of the West Arm of Grand Traverse Bay bounded by a line drawn from 44°46′48″ N, 085°38′18″ W, then southeast to 44°46′30″ N, 085°35′30″ W, then southwest to 44°46′00″ N, 085°35′48″ W, then northwest to 44°46′30″ N, 085°38′30″ W, then back to the point of origin [DATUM: NAD 83].

(ii) *Enforcement Period.* Each year on Friday, Saturday, and Sunday of the first complete weekend of July from noon until 4 p.m.

(16) *National Cherry Festival Finale Fireworks; Traverse City, MI:*

(i) *Location.* All U.S. navigable waters and adjacent shoreline of the West Arm of Grand Traverse Bay within the arc of a circle with a 1000-foot radius from the

fireworks launch site located on a barge in position 44°46′12″ N, 085°37′06″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* Each year on the second Saturday of July from 9 p.m. until 11 p.m.

(17) *Charlevoix Venetian Festival Friday Night Fireworks; Charlevoix, MI:*

(i) *Location.* All U.S. navigable waters of Lake Charlevoix, in the vicinity of Depot Beach, within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 45°19′08″ N, 085°14′18″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* Each year on Friday of the fourth weekend of July from 9 p.m. until 11 p.m.

(18) *Charlevoix Venetian Festival Saturday Night Fireworks; Charlevoix, MI:*

(i) *Location.* All U.S. navigable waters of Round Lake within the arc of a circle with a 300- foot radius from the fireworks launch site located on a barge in position 45°19′03″ N, 085°15′18″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* Each year on Saturday of the fourth weekend of July from 9 p.m. until 11 p.m.

(19) *Elk Rapids Harbor Days Fireworks; Elk Rapids, MI:*

(i) *Location.* All U.S. navigable waters of Grand Traverse Bay, in the vicinity of Edward G. Grace Memorial Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°53′58″ N, 085°25′04″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* Each year on the first Saturday of August from 9 p.m. until 11 p.m.

(20) Alpena *Fourth of July Celebration Fireworks,* Alpena, MI:

(i) *Location.* All U.S. navigable waters of Lake Huron within an 800-foot radius of the fireworks launch site located near the end of Mason Street, South of State Avenue, at position 45°02′42″ N, 083°26′48″ W (NAD 83).

(ii) *Enforcement Period.* This safety zone will be enforced each year on July 4 from 9 p.m. until 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5 from 9 p.m. until 11 p.m.

(b) Definitions. The following definitions apply to this section:

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Sault Sainte Marie to monitor these safety zones, permit entry into these safety zones, give legally enforceable orders to persons or vessels within these safety zones, or take other actions authorized by the Captain of the Port Sault Sainte Marie.

*Public vessel* means a vessel owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within any of the safety zones listed in this section is prohibited unless authorized by the Captain of the Port Sault Sainte Marie, or a designated representative.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Sault Sainte Marie or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) When a safety zone established by this section is being enforced, all vessels must obtain permission from the Captain of the Port Sault Sainte Marie or a designated representative to enter, move within, or exit that safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Sault Sainte Marie or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(d) *Suspension of Enforcement.* If the event concludes earlier than scheduled, the Captain of the Port Sault Sainte Marie or a designated representative will issue a Broadcast Notice to Mariners notifying the public that enforcement of the respective safety zone is suspended.

(e) *Exemption.* Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Sault Sainte Marie or a designated representative may, at his or her discretion, waive any of the requirements of this section, upon finding that circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: May 17, 2011.

**G.J. Paitl,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Sector Sault Sainte Marie.*

[FR Doc. 2011–13438 Filed 6–1–11; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0384]**

**RIN 1625–AA00**

## Safety Zone; Temporary Change to Enforcement Location of Recurring Fireworks Display Event, Currituck Sound; Corolla, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily changing the enforcement location of a safety zone for one specific recurring fireworks display in the Fifth Coast Guard District. This regulation applies to only one recurring fireworks event, held adjacent to the Currituck Sound, Corolla, North Carolina. The fireworks display formerly originated from a barge but will this year originate from a location on land. The 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 in a portion of the Currituck Sound, Corolla, NC, during the event.

**DATES:** In § 165.506, entry (d)14 is effective from 5:30 p.m. on July 4, 2011 until 1 a.m. on July 5, 2011. In § 165.506, Table to § 165.506, entry (d)5 is suspended from 5:30 p.m. on July 4, 2011 until 1 a.m. on July 5, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0384 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0384 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail CWO3 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 the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to minimize potential danger to the public during the event. The potential dangers posed by fireworks displays conducted near the Currituck Sound with other vessel traffic makes a safety zone necessary to provide for the safety of participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

**Background and Purpose**

Recurring fireworks displays are frequently held on or adjacent to the navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

The regulation listing annual fireworks displays within the Fifth Coast Guard District and their regulated locations is 33 CFR 165.506. A Table to § 165.506 identifies fireworks displays by COTP zone, with the COTP North Carolina zone listed in Portion "d" of the Table.

The township of Corolla, North Carolina, sponsors an annual fireworks display held on July 4th over the waters of Currituck Sound at Corolla, North Carolina. The Table to § 165.506, at Portion "d" event Number "5", established the enforcement date and regulated location for this fireworks event.

The location listed in the Table has the fireworks display originating from a fireworks barge on Currituck Sound. However, this temporary final rule changes the fireworks launch location on July 4, 2011, to a position on shore at latitude 36°22′23.8″ N, longitude 075°49′56.3″ W.

A fleet of spectator vessels is anticipated to gather nearby to view the fireworks display. Due to the need for vessel control during the fireworks display vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. Under provisions of 33 CFR 165.506, during the enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

**Discussion of Rule**

The Coast Guard will temporarily suspend the regulation listed in Table to § 165.506, at Portion "d" event Number "5", and will insert this new temporary regulation at Table to § 165.506, at Portion "d" as event Number "14", in order to reflect that the fireworks display will originate from a point on shore and therefore the regulated area is changed. This change is needed to accommodate the sponsor's event plan. No other portion of the Table to § 165.506 or other provisions in § 165.506 shall be affected by this regulation.

The regulated area of this safety zone includes all water of the Currituck Sound within a 300 yards radius of latitude 36°22′23.8″ N, longitude 075°49′56.3″ W.

This safety zone will restrict general navigation in the regulated area during the fireworks event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective period. The regulated area is needed to control vessel traffic during the event to enhance the safety of participants and transiting vessels.

The enforcement period for this safety zone does not change from that enforcement period listed in § 165.506(d). Therefore, this safety zone will be enforced from 5:30 p.m. on July 4, 2011 through 1 a.m. on July 5, 2011.

In addition to notice in the **Federal Register**, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

**Regulatory Analyses**

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

This rule prevents traffic from transiting a portion of the Currituck Sound during the specified event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking changes the regulated area for the Currituck Sound fireworks demonstration for July 4, 2011 only and does not change the permanent regulated area that has been published in 33 CFR 165.506, Table to § 165.506 at portion "d" event Number "5". In some cases vessel traffic may be able to transit the regulated area 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 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 rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the Currituck Sound where fireworks events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during the fireworks display event that has been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the regulated area when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various

times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this 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 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule establishes a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Amend § 165.506 as follows:

■ a. From 5:30 p.m. on July 4, 2011 through 1 a.m. on July 5, 2011 in the Table to § 165.506, suspend entry (d)5.

■ b. From 5:30 p.m. on July 4, 2011 through 1 a.m. on July 5, 2011, in the Table to § 165.506, add entry (d)14 to read as follows:

**§ 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays.**

* * * * *

| Number | Date | Location | Regulated area |
|---|---|---|---|
| * | * | * | * |
| **(d) Coast Guard Sector North Carolina—COTP Zone** | | | |
| * | * | * | * |
| 14 ..... | July 4, 2011 ..... | Currituck Sound, Corolla, NC, Safety Zone ..... | All waters of the Currituck Sound within a 300 yard radius of the fireworks launch site in approximate position latitude 36°22′23.8″ N, longitude 075°49′56.3″ W, located near Whale Head Bay. |

Dated: May 10, 2011.

**A. Popiel,**

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

[FR Doc. 2011–13646 Filed 6–1–11; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0167]**

**RIN 1625–AA00**

## Safety Zone; 28th Annual Humboldt Bay Festival, Fireworks Display, Eureka, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in support of the 28th Annual Humboldt Bay Festival Fireworks Display on the specified waters off the South end of Woodley Island in Eureka, California. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or her designated representative.

**DATES:** This rule is effective from 11:45 a.m. on July 3, 2011 until 10:45 p.m. on July 4, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0167 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0167 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call ENS Liz Ellerson at (415) 399–7443, or e-mail *D11–PF–MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because it would be impracticable to delay this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in these fireworks displays, the immediate action is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

### Basis and Purpose

The City of Eureka will sponsor the 28th Annual Humboldt Bay Festival Fireworks Display. The fireworks display is for entertainment purposes. This safety zone establishes a temporary restricted area on the waters 100 feet surrounding the fireworks loading, transit and launch sites, and extends the safety zone to 1,000 feet of the launch site during the fireworks display. This safety zone is necessary to protect spectators, vessels, and other property from the hazards associated with pyrotechnics on the fireworks barges. The Coast Guard has granted the event sponsor a marine event permit for the fireworks displays.

### Discussion of Rule

The City of Eureka will sponsor the 28th Annual Humboldt Bay Festival Fireworks Display from 11:45 a.m. on July 3, 2011 until 10:45 p.m. on July 4, 2011, on the navigable waters of Humboldt Bay located 200 yards off the South end of Woodley Island in Eureka, California. From 12 p.m. until 8 p.m. on July 3, 2011, pyrotechnics will be loaded onto a barge at Schneider Pier. From 3 p.m. until 4 p.m. on July 4, 2011 the loaded barge will be transiting from Schneider Dock to the launch site located at position 40°48′35.30″ N, 124°09′56.47″ W (NAD 83). The temporary safety zone will extend 100 feet from the nearest point of the barge during the loading, transit, and arrival of the pyrotechnics from Schneider Pier to position 40°48′35.30″ N, 124°09′56.47″ W (NAD 83). The fireworks display will occur from 10 p.m. on July 4, 2011 until 10:25 p.m., during which the safety zone will extend 1,000 feet from the nearest point of the barge at position 40°48′35.30″ N, 124°09′56.47″ W (NAD 83). At 11 p.m. on July 4, 2011 the safety zone shall terminate.

The effect of the temporary safety zones will be to restrict navigation in the vicinity of the fireworks sites while the fireworks are set up, and until the conclusion of the scheduled displays. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barges to ensure the safety of

participants, spectators, and transiting vessels.

**Regulatory Analyses**

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

Although this rule restricts access to the waters encompassed by the safety zones, the effect of this rule will not be significant because: (1) The entities most likely to be affected are pleasure craft engaged in recreational activities; (2) the rule will only restrict access for a limited time; and (3) the Public Broadcast Notice to Mariners will notify the users of local waterway to ensure that the safety zone will result in minimum impact.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule will 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 and operators of pleasure craft engaged in recreational activities and sightseeing intending to transit the designated area of Humboldt Bay between 11:45 a.m. on July 3, 2011 and 10:45 p.m. July 4, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for several reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time; (ii) vessel traffic can pass safely around the area; (iii) vessels engaged in recreational activities and sightseeing have ample space outside of the affected areas of San Francisco, CA to engage in these activities; and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this 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 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 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 temporary § 165.T11–409 to read as follows:

### § 165.T11–409 Safety Zone; 28th Annual Humboldt Bay Festival, Fireworks Display, Eureka, CA

(a) *Location.* (1) This temporary safety zone is established for the waters located 200 yards off the South end of Woodley Island in Eureka, CA. The fireworks launch site will be located in position: 40°48′35.30″ N, 124°09′56.47″ W (NAD 83).

(2) During the loading of the fireworks, on July 3, 2011 at 12 p.m. at Schneider Dock in Eureka, CA, and until the start of the fireworks displays at 10 p.m. on July 4, 2011 the temporary safety zone shall extend 100 feet from the loaded pyrotechnics barge at Schneider Dock, during transit and arrival to position: 40°48′35.30″ N, 124°09′56.47″ W (NAD 83).

(3) From 9:45 p.m. until 10:45 p.m. on July 4, 2011, the area to which the temporary safety zones apply will increase in size to 1,000 feet at position 40°48′35.30″ N, 124°09′56.47″ W (NAD 83). At 10:45 p.m. on July 4, 2011, this safety zone shall terminate.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zones on VHF–16 or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Effective period.* This section is effective from 11:45 a.m. on July 3, 2011 until 10:45 p.m. on July 4, 2011.

Dated: May 1, 2011.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2011–13689 Filed 6–1–11; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0427]**

**RIN 1625–AA00**

## Safety Zone; M/V Del Monte Live-Fire Gun Exercise, James River, Isle of Wight, Virginia

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the James River in Isle of Wight, VA. This action is necessary to provide for the safety of life on navigable waters during the live-fire gun exercises on the M/V Del Monte. This action is intended to restrict vessel traffic movement to protect mariners from the hazards associated with the live-fire gun exercise.

**DATES:** This rule will be effective from 11 a.m. June 6, 2011 until 4 p.m. on June 10, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0427 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0427 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail CWO Carlos A. Hernandez, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5583, e-mail *Carlos.A.Hernandez@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good

cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of vessels transiting in the vicinity of where the exercise will be conducted by Navy personnel. This exercise is necessary to train and qualify Navy personnel in the use of weapons. This training is necessary to ensure that Navy personnel located within the Fifth Coast Guard District are properly trained and qualified before conducting military and national security operations for use in securing ports and waterways. Navy policy requires that Navy personnel meet and maintain certain qualification standards before being allowed to carry weapons on board vessels. Failure to conduct this required training at this time will result in a lapse in personnel qualification standards and, consequently, the inability of Navy personnel to carry out important national security functions at any time. Publishing a NPRM and waiting 30 days for comment would be contrary to the public interest because any delay in the effective date of this rule would expose mariners, the boating public, and divers to the potential hazards associated with the Navy's live fire and explosive training exercises.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of vessels transiting the area.

## Background and Purpose

Coast Guard Sector Hampton Roads was notified that the U.S. Navy will conduct a live fire and explosive training event onboard the M/V Del Monte in the vicinity of the James River Reserve Fleet. The event is scheduled to take place from June 6, 2011 until June 10, 2011. Due to the need to protect mariners transiting on the James River in the vicinity of the exercise from the hazards associated with live fire and explosive events, the Coast Guard is establishing a safety zone bound by a 1500 foot radius around approximate position 37°06′11″ N/076°38′40″ W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

## Discussion of Rule

The Coast Guard is establishing a 1500 foot radius safety zone on specified waters of James River around approximate position 37°06′11″ N/076°38′40″ W (NAD 1983) in the vicinity of the James River Reserve Fleet. This safety zone is being established in the interest of public safety during the live fire and explosive training exercise and will be enforced from 11 a.m. on June 6, 2011 until 4 p.m. on June 10, 2011. Access to the safety zone will be restricted during the specified dates and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

## Regulatory Analyses

We developed this 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 rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; (iii) mariners may transit the waters in and around this safety zone at the discretion of the Captain of the Port or designated representative; and (iv), the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule will not have a significant economic impact on a substantial number of small entities.

The rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the James River from 11 a.m. on June 6, 2011 until 4 p.m. on June 10, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration and is of a limited size. (ii) Before the enforcement period, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

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

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

## Collection of Information

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

## Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, Under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves a temporary safety zone that will be in effect for only five days and is intended to keep mariners safe from the hazards associated with live fire and explosive exercises. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0427 to read as follows:

*Safety Zone; M/V Del Monte Live-Fire Gun Exercise, James River, Isle of Wight, Virginia*

(a) *Regulated Area.* The following area is a safety zone: All waters in the vicinity of the James River Reserve Fleet on the James River within a 1500 foot radius of position 37°06′11″ N/ 076°38′40″ W (NAD 1983).

(b) Definition. For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia 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, Hampton Roads 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, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

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

(d) *Enforcement Period.* This rule will be enforced from 11 a.m. on June 6, 2011 until 4 p.m. on June 10, 2011.

Dated: May 18, 2011.

**Mark S. Ogle,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 2011–13644 Filed 6–1–11; 8:45 am]

BILLING CODE 9110–04–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG–2011–0417]**

**RIN 1625–AA00**

## Safety Zone; Put-in-Bay Fireworks, Fox's the Dock Pier; South Bass Island, Put-in-Bay, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the Captain of the Port Detroit Zone on Lake Erie, Put-in-Bay, Ohio. This Zone is intended to restrict vessels from portions of Lake Erie for the Put-in-Bay Fireworks. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

**DATES:** This regulation is effective from 9:15 p.m. on June 19, 2011 through 9:45 p.m. September 17, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0417 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0417 in the "Keyword" box, and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail BM1 Tracy Girard, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6036, e-mail *tracy.m.girard@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because waiting for a comment period to run would be impracticable and contrary to the public interest because it would prevent the Captain of the Port Detroit from keeping the public safe from the hazards associated with a maritime fireworks displays.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Waiting for a 30-day effective period to run is impracticable and contrary to the public interest for the reasons discussed in the preceding paragraph.

### Background and Purpose

The Put-in-Bay Fireworks displays will occur between 9:15 p.m. and 9:45 p.m. on June 19, June 27, and September 17, 2011. This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. Such hazards include obstructions to the waterway, the explosive danger of fireworks, and debris falling into the water, all of which may cause death or serious bodily harm.

### Discussion of Rule

Because of the aforesaid hazards, the Captain of the Port, Sector Detroit has determined that a temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the Put-in-Bay Fireworks Accordingly, the safety zone will encompass all U.S. navigable waters of Lake Erie within a 50-yard radius of the fireworks launch site located at position 41°39′17″ N, 082°48′57″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Detroit or the designated patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or his designated representative. The Captain of the Port, Sector Detroit or his designated representative may be contacted via VHF Channel 16.

### Regulatory Analyses

We developed this 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 rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule will 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 and operators of vessels intending to transit or anchor in a portion of the Lake Erie, South Bass Island, Put-In-Bay, OH between 9:15 p.m. and 9:45 p.m. on June 19, June 27, and September 17, 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 ninety minutes total and commercial vessels can request permission to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 023–01, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction because it involves the establishment of a temporary safety zone. This rule involves the establishment of a safety zone and is therefore categorically excluded under paragraph 34(g) of the Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0417 as follows:

**§ 165.T09–0417 Safety Zone; Put-In-Bay Fireworks, Fox's the Dock Pier, South Bass Island; Put-In-Bay, OH.**

(a) *Location.* The following area is a temporary safety zone: All U.S. navigable waters of Lake Erie, South Bass Island, Put-In-Bay, OH within a 50-yard radius of the fireworks launch site located at position 41°39′17″ N, 082°48′57″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and enforcement period.* This regulation is effective from 9:15 p.m. on June 19, 2011 through 9:45 p.m. on September 17, 2011. The safety zone will be enforced from 9:15 p.m. until 9:45 p.m. on June 19, June 27, and September 17, 2011. The Captain of the Port, Sector Detroit, or his designated representative may suspend

enforcement of the safety zone at any time.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit, or his designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Detroit or his designated representative.

(3) The "designated representative" of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Detroit to act on his behalf. The designated representative of the Captain of the Port, Sector Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Detroit or his designated representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Detroit or his designated representative.

Dated: May 19, 2011.

**J.E. Ogden,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Detroit.*

[FR Doc. 2011–13651 Filed 6–1–11; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[USCG–2011–0401]**

**RIN 1625–AA00**

## Safety Zone; Annual Events requiring safety zones in Milwaukee Harbor, Milwaukee, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce this safety zone for annual fireworks events in the Captain of the Port, Sector Lake Michigan zone at various times from 9:15 p.m. on June 11, 2011 through 11 p.m. on June 29, 2011. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. This rule will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port, Sector Lake Michigan.

**DATES:** The regulations in 33 CFR 165.935 will be enforceable at various times from 9:15 p.m. on June 11, 2011 through 11 p.m. on June 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154, e-mail *Adam.D.Kraft@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone listed in 33 CFR 165.935, Safety Zones, Milwaukee Harbor, Milwaukee, WI, at the following time for the following events:

(1) *Pridefest fireworks display* on June 11, 2011 from 9:15 p.m. through 10 p.m.

(2) *Polish Festival fireworks display* on June 18,2011 from 10:15 p.m. through 11 p.m.;

(3) *Summerfest fireworks display* on June 29, 2011 from 9:15 p.m. through 10:30 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.935 Safety Zone, Milwaukee Harbor, Milwaukee, WI and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: May 23, 2011.

**L. Barndt,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. 2011–13649 Filed 6–1–11; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0197]**

**RIN 1625–AA00**

## Safety Zone; Commencement Bay, Tacoma, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending our regulations to expand the established safety zone during the annual Tacoma Freedom Air Show held at Commencement Bay, Tacoma, WA. The safety zone expansion will enlarge the clear area for low flying aircraft during this event. This expanded safety zone is necessary to ensure the safety of crews, spectators, participants of the event, participating vessels, and other vessels and users of the waterway during the event. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the COTP or his designated representative.

**DATES:** This rule is effective July 5, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0197 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0197 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Ensign Anthony P. LaBoy, USCG

Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6323, e-mail *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

On April 7, 2011, we published a notice of proposed rulemaking (NPRM) entitled: Safety Zone; Commencement Bay, Tacoma, WA, in the **Federal Register** (76 FR 19290). We received zero comments on the proposed rule. We received zero requests for a public meeting and one was not held.

## Basis and Purpose

The Coast Guard is expanding the boundaries of the safety zone established in 33 CFR 165.1305. Due to the growth of the event, sponsors have requested a larger safety zone in order to safely accommodate additional aircraft and displays while protecting the safety of crews, spectators, participants of the event, participating vessels, and other vessels and users of the waterway during the event. In addition, expanding the zone will allow safety vessels to patrol inside the safety zone; reducing any vessel traffic along the shoreline that could impede movement of safety vessels.

## Background

The Tacoma Freedom Fair Air Show is an annual air show in Tacoma, WA. The show involves demonstrations by civilian, Navy, Air Force, Marine Corps, and Coast Guard aircraft, to include rescue simulations performed by low-flying helicopters. This rule expands the safety zone codified in 33 CFR 165.1305. This expansion accommodates the growth of the air show since its 1995 debut and ensures the safety of crews, spectators, participants of the event, participating vessels, and other vessels and users of the waterway during the event.

## Discussion of Comments and Changes

No comments on the proposed rulemaking were received and no changes are being made to the rule.

## Regulatory Analyses

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

The Coast Guard bases this finding on the fact that the safety zone is small in size, short in duration, and maritime traffic will be able to safely transit the area outside of this safety zone. Maritime traffic may also request permission to transit through the zone from the Captain of the Port, Puget Sound or Designated Representative.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to enter or transit through a portion of Commencement Bay, Tacoma, Washington on July 4th from 2 p.m. until 12:30 a.m. July 5th, annually. This safety zone will not have a significant economic impact on a substantial number of small entities, because the safety zone is short in duration, minimal in size, and maritime traffic will be allowed to transit through the safety zone with permission.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

## Collection of Information

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

## Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## Taking of Private Property

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

## Civil Justice Reform

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

## Protection of Children

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves changing a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.1305, revise paragraph (a) to read as follows:

**§ 165.1305 Commencement Bay, Tacoma, WA**

(a) *Location.* The following area is a safety zone for the Tacoma Freedom Fair Air Show: All portions of Commencement Bay bounded by the following coordinates: Latitude 47°17′38″ N, Longitude 122°28′43 W; thence south easterly to Latitude 47°17′4″ N, Longitude 122°27′32″ W; thence south westerly to Latitude 47°16′35″ N, Longitude 122°28′1″ W; thence north westerly along the shoreline to Latitude 47°17′10″ N, Longitude 122°29′14″ W; thence returning to the origin. This safety zone resembles a rectangle protruding from the shoreline along Ruston Way. Floating markers will be placed by the sponsor of the event to delineate the boundaries of the safety zone.

* * * * *

Dated: May 11, 2011.

**S.J. Ferguson,**

*Captain, U. S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 2011–13443 Filed 6–1–11; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF EDUCATION

### 34 CFR Part 222

**RIN 1810–AB11**

### Impact Aid Programs; Corrections

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final regulations; correction.

**SUMMARY:** The Department of Education published final regulations in the **Federal Register** on April 28, 2011 (76 FR 23712) to amend the regulations governing the Impact Aid Discretionary Construction program, authorized under section 8007(b) of the Elementary and Secondary Education Act of 1965, as amended. That document inadvertently included the incorrect RIN number for the regulatory action. This document corrects the RIN number for that regulatory action.

**FOR FURTHER INFORMATION CONTACT:** Kristen Walls-Rivas, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 260–1357 or via e-mail: *Kristen.Walls-Rivas@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** This document corrects a technical error included in a document announcing the final Impact Aid Discretionary Construction program regulations that the Department published in the **Federal Register** on April 28, 2011 (76 FR 23712). Specifically, the RIN number provided on the first page of the April 28, 2011 (76 FR 23712) document is changed to 1810–AB11, which is the correct RIN number for the final regulations published on April 28, 2011 (76 FR 23712).

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**Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**List of Subjects in 34 CFR Part 222**

Education, Grant programs—education, Application procedures, Construction programs.

Dated: May 26, 2011.

**Thelma Meléndez de Santa Ana,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2011–13590 Filed 6–1–11; 8:45 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2011–0099; FRL–9312–7]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Adoption of Control Techniques Guidelines for Flat Wood Paneling Surface Coating Processes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania (Pennsylvania). This SIP revision includes amendments to Chapter 121—General Provisions and Chapter 129—Standards for Sources, of Title 25 of the Pennsylvania Code. Pennsylvania's SIP revision meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for flat wood paneling surface coating processes. EPA is approving this revision concerning the adoption of the EPA CTG requirements for flat wood paneling surface coating processes in accordance with the requirements of the Clean Air Act (CAA).

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

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0099. 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 Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 182(b)(2) of the CAA, 42 U.S.C. 7511a(b)(2), requires that States having moderate nonattainment areas for ozone revise their SIP to include provisions requiring the implementation of RACT for certain sources, including categories of Volatile Organic Compound (VOC) sources covered by a CTG document issued by the Administrator between November 15, 1990 and the date of attainment. EPA originally developed CTG standards for flat wood paneling surface coating processes in 1978 and revised them in 2006. Pennsylvania subsequently made changes to its SIP which adopted EPA's CTG standards for flat wood paneling surface coating processes. The formal SIP revision was submitted by Pennsylvania to EPA on January 4, 2011. On March 14, 2011 (76 FR 13567), EPA published a notice of proposed rulemaking (NPR) for Pennsylvania. The NPR proposed approval of Pennsylvania's SIP revision for adoption of the CTG standards for flat wood paneling surface coating processes. The formal SIP revision was submitted by Pennsylvania on January 4, 2011.

### II. Summary of SIP Revision

On January 4, 2011, PADEP submitted to EPA a SIP revision concerning the adoption of the CTG standards for flat wood paneling surface coating processes. EPA develops CTGs as guidance on control requirements for source categories. States can follow the CTGs or adopt more restrictive standards. Pennsylvania has adopted EPA's CTG standards for flat wood paneling surface coating processes. These regulations are in Chapter 121—General Provisions and in Chapter 129—Standards for Sources, in Title 25 of the Pennsylvania Code. Specifically, this revision amends the existing regulations at sections 121.1, 129.51, 129.66, and adds new section 129.52c. Several definitions were added in section 121.1, and section 129.51 was amended to extend coverage to flat wood paneling surface coating processes. The new section 129.52c includes VOC emission limits, work practices, and recordkeeping and reporting requirements, all of which are consistent with EPA's CTG for flat wood paneling surface coating processes. The emission limits of VOCs for flat wood paneling surface coatings are shown in Table 1. These emission limits apply if the total actual VOC emissions from all flat wood paneling surface coating operations at the facility are equal to or greater than 15 pounds (lb) (6.8 kilograms (kg)) per day, before consideration of controls.

TABLE 1—EMISSION LIMITS OF VOCS FOR FLAT WOOD PANELING SURFACE COATINGS

| Surface coatings, inks, or adhesives applied to the following flat wood paneling categories | Should meet one of these emission limits | |
|---|---|---|
| | lb VOC/gallon coating solids | grams VOC/Liter coating solids |
| Printed interior panels made of hardwood, plywood, or thin particleboard | 2.9 | 350 |
| Natural finish hardwood plywood panels | 2.9 | 350 |
| Class II finishes on hardboard panels | 2.9 | 350 |
| Tileboards | 2.9 | 350 |

TABLE 1—EMISSION LIMITS OF VOCS FOR FLAT WOOD PANELING SURFACE COATINGS—Continued

| Surface coatings, inks, or adhesives applied to the following flat wood paneling categories | Should meet one of these emission limits | |
|---|---|---|
| | lb VOC/gallon coating solids | grams VOC/Liter coating solids |
| Exterior siding | 2.9 | 350 |

Other specific requirements concerning this rulemaking and the rationale for EPA's action are explained in the NPR and the Technical Support Document (TSD) and will not be restated here. No public comments were received on the NPR.

## III. Final Action

EPA is approving Pennsylvania's adoption of the CTG requirements for flat wood paneling surface coating processes as a revision to the Pennsylvania SIP.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

### *B. Submission to Congress and the Comptroller General*

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

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 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 concerning Pennsylvania's adoption of a CTG for flat wood paneling surface coating processes 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 9, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by revising the entries for Sections 121.1, 129.51 and 129.66; and adding an entry for Section 129.52c after the existing entry for Section 129.52. The amendments read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(1) * * *

| State citation | Title/subject | State effective date | EPA approval date | Additional explanation/ § 52.2063 citation |
|---|---|---|---|---|
| Title 25—Environmental Protection | | | | |
| Article III—Air Resources | | | | |
| Chapter 121—General Provisions | | | | |
| Section 121.1 | Definitions | 12/18/10 | 6/2/11 *[Insert page number where the document begins]*. | Eighteen new definitions are added. |
| * | * | * | * | * |
| Chapter 129—Standards for Sources | | | | |
| * | * | * | * | * |
| Sources of VOCs | | | | |
| * | * | * | * | * |
| Section 129.51 | General | 12/18/10 | 6/2/11 *[Insert page number where the document begins]*. | Paragraph 129.51(a) is amended. |
| * | * | * | * | * |
| Section 129.52c | Control of VOC emissions from flat wood paneling surface coating processes. | 12/18/10 | 6/2/11 *[Insert page number where the document begins]*. | New section is added. |
| * | * | * | * | * |
| Section 129.66 | Compliance schedules and final compliance dates. | 12/18/10 | 6/2/11 *[Insert page number where the document begins]*. | This section is amended. |
| * | * | * | * | * |

* * * * *

[FR Doc. 2011–13267 Filed 6–1–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2011–0055–201136; FRL–9313–8]**

## Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Georgia: Macon; 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 Macon, Georgia, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as "the Macon Area" or "Area") has attained the 1997 annual average $PM_{2.5}$ national ambient air quality standard (NAAQS). The Macon Area is comprised of Bibb County in its entirety and a portion of Monroe County. 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 July 5, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2011–0055. 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 Macon Area (comprised of Bibb County in its entirety and a portion of Monroe

County) 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 March 22, 2011 (76 FR 15892). For summary purposes, the Macon-Allied Chemical monitor (13–021–0007) did not meet 75 percent completeness for the first quarter of 2008 and the Macon SE monitor (13–021–0012) did not meet 75 percent completeness for the second and fourth quarters of 2008 and third quarter of 2009. The 3-year average annual concentrations for 2007–2009 without data substitution are 13.7 $\mu g/m^3$ for Macon Allied and 12.0 $\mu g/m^3$ for Macon SE. The 3-year average annual concentrations for 2007–2009 on this table with data substitution are 14.9 $\mu g/m^3$ for Macon Allied and 13.3 $\mu g/m^3$ for Macon SE. EPA proposed that the Macon 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 $\mu g/m^3$, is considered to be the official design value. The comment period closed on April 21, 2011. No 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 Macon 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 Macon 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 Macon 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 August 1, 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: May 19, 2011.

**Gwendolyn Keyes Fleming,**

*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 paragraph (c) to read as follows:

**§ 52.578 Control Strategy: Sulfur oxides and particulate matter.**

* * * * *

(c) *Determination of Attaining Data.* EPA has determined, as of June 2, 2011, the Macon, 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.

[FR Doc. 2011–13567 Filed 6–1–11; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 572

**[Docket No. NHTSA–2010–0146]**

**RIN 2127–AK64**

## Anthropomorphic Test Devices; Hybrid III Test Dummy, ES–2re Side Impact Crash Test Dummy

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This document corrects or makes minor changes to some of the drawings incorporated by reference into NHTSA regulations by a final rule published on June 16, 2008, concerning a 50th percentile adult male side crash test dummy called the "ES–2re" test dummy. The corrections and adjustments to the drawings respond to requests from test dummy manufacturers First Technology Safety Systems (FTSS) and Denton ATD (Denton). This final rule also corrects dimensional errors in a figure which depicts the pendulum used in the neck qualification tests of several of the crash test dummies, including the Hybrid III and ES–2re test dummies.

**DATES:** The effective date of this final rule is November 29, 2011. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 2011.

*Petitions for reconsideration:* Petitions for reconsideration of this final rule must be received not later than July 18, 2011.

**ADDRESSES:** Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. (A copy of the petition will be placed in the docket.)

*Privacy Act:* Anyone is able to search the electronic form of all submissions 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.*). A copy of the petition will be placed in the docket. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Peter Martin, NHTSA Office of Crashworthiness Standards (telephone 202–366–5668) (fax 202–493–2990). For legal issues, you may call Deirdre Fujita, NHTSA Office of Chief Counsel (telephone 202–366–2992) (fax 202–366–3820). The mailing address for these officials is the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

### I. Background

NHTSA published a final rule on June 16, 2008 (73 FR 33903, Docket No. NHTSA–08–0111) that responded to various petitions for reconsideration of a previous final rule [1] incorporating a mid-size adult male crash test dummy, called the "ES–2re" test dummy, into 49 CFR part 572, Subpart U. The ES–2re is used in an upgraded Federal Motor Vehicle Safety Standard No. 214, "Side impact protection," and in the agency's New Car Assessment Program. The June 16, 2008 final rule incorporated by reference a drawing package, parts list, and user's manual, all dated February 2008.

After publication of the June 16, 2008 final rule, NHTSA received requests from dummy manufacturers FTSS and Denton to correct errors in or make minor changes to the ES–2re drawing package. Many of these requested changes were wholly corrective, while others, although minor, were more substantive and notice of such changes appeared beneficial. Rather than respond to the requested changes piecemeal, the agency decided to address all the requested changes in a rulemaking proceeding that commenced with a notice of proposed rulemaking (NPRM) published February 5, 2010 (75 FR 5931; Docket No. NHTSA–2009–0194).

The February 5, 2010 NPRM provided a detailed discussion of the proposed changes to the ES–2re drawing package and parts list. In addition, the NPRM proposed to clarify the inclusion of load sensors and to correct dimensional errors in Figure 22 of 49 CFR part 572, which is a figure illustrating the pendulum used in the neck qualification test for the ES–2re and other adult crash test dummies (*e.g.,* the Hybrid III 50th percentile adult male).

NHTSA received no comments on the NPRM. We are adopting the changes proposed in the NPRM for the reasons discussed in that document.

### II. Changes in Response to FTSS

NHTSA is making the following changes to the drawing package and parts list for the ES–2re dummy in response to FTSS. In the NPRM, NHTSA provided a detailed discussion of the changes requested by FTSS and our rationale underlying our tentative decision to grant or deny each request. In this final rule, the agency is adopting these amendments for the reasons discussed in the NPRM.

1. Drawing 175–1011, Top Plate UNLC Blank. NHTSA is removing the Ø symbol from the dimensions MØ5.0, MØ6.0, MØ6, and MØ2.5.

2. Drawing 175–3502, Pivot Stop Plate, Left. Note #4 is fixed by replacing RH with LH.

3. Drawing 175–6006, Pubic Symphysis Structural Replacement. The Part Mark located at the center of the part is removed from the drawing.

4. Drawing 175–6012, Hip Pivot Pin. Dimension "16.994 +0.000/− 0.011" is changed to "16.990 +0.000/ − 0.011."

5. Drawing 175–6010, Iliac Wing Assembly, Left. Drawing dimension "17.0556" is changed to (17), a reference dimension. Dimension "R0.5" is added. Dimension "Ø20.03 ± 0.05" is changed to "Ø20.05 ± 0.05." The material reference block is amended to specify the material to be "PU Resin" (polyurethane).

6. Drawing 175–6063, Femur Bearing Plate, Left. The "48.3000 ± 0.0001" dimension is changed to "48.3." The 17.5000 dimension for hole depth in zone C–2 is changed to (17.5) to indicate a reference. Zone D–1 is amended by eliminating an extra "R" in the R23.5 dimension.

7. Drawing 175–6068, Femur Bearing Plate, Right. We are removing the

[1] That final rule adopting the ES–2re into 49 CFR part 572 was published December 14, 2006 (71 FR 75303, Docket No. NHTSA–04–25441).

parenthesis from around dimension "(48.3)."

8. Drawing 175–6002, Iliac Wing Assembly, Right. We are changing drawing dimension "Ø20.03" to "Ø20.05 ± 0.05." We also add dimension "R0.5."

9. Drawing 175–2003, Plate, Neck Head & Torso Interface. Section C–C of the drawing showing the thickness of the Helicoil is changed to M6 x 1 x 4.5. Item 1 on the parts list is changed to part number 5000729 Helicoil M6 x 1 x 4.5. We also add dimension "4X R3.2 to the Surface" on Detail Z.

10. Drawing 175–3011, CAM Buffer Pad. Drawing dimensions Ø5.0, 90.0, 5.0, and 21.2 ± 0.2 are replaced with dimensions Ø5, 90, 5, and 21.2 ± 0.3, respectively.

11. Drawing 175–7058, Friction Plate Retaining Stud. The Datum A tolerance of 0.0003 is changed to 0.003.

12. Drawing 175–7085–1, Knee Flesh, Left. The drawing is amended to add a definition for "A" to match drawing 175–7085–2, which specifies that "A = 1¾."

13. Drawing 175–7090–1, Thigh Molded, Left. Drawing dimensions (2x ØØ24) is changed to (2x Ø24) and (2x Ø14) is changed to (2x14).

14. Drawing 175–9013, Bearing. Revision record B is corrected to read "ADDED REF. TO MATERIAL SPECIFICATION."

15. Drawing 175–9014, Pin Machined. Revision indicator for revision "B" (REV B) is added next to the material reference.

16. Drawing SA572–571–1, Lower Neck Load Cell Assembly. The specification for load cell weight is made a reference. The drawing is also amended to indicate that the reference weight specification applies to item 1 (the lower neck load cell) only, and not the entire assembly.

## III. Changes in Response to Denton

NHTSA is making the following changes to the drawing package and parts list for the ES–2re dummy in response to Denton. The changes and reasons underlying these changes are fully discussed in the NPRM.

1. Drawing No. 175–1001, Skull Machined. The distance between the upper 2 holes is changed from 71.2 mm apart to 71.1 mm apart.

2. Drawing No. 175–4006, Rib Rail Assembly. We are amending the drawing to add an option to the drawing that allows use of a button head cap screw (BHCS) BHCS M3 x .5 x 8.

3. Drawing No. 175–4012, V-rail. The drawing is changed such that the tapped holes are specified as optional.

## IV. Corrections to Figure 22

This final rule corrects several dimensional values in Figure 22, "Pendulum Specifications," of 49 CFR part 572. This pendulum is used in neck qualification tests for the ES–2re as well as other adult crash test dummies, including the Hybrid III 50th percentile male and 5th percentile female frontal crash test dummies, the SID–IIsD 5th percentile female side impact dummy, and the SID and SID/HIII side impact crash test dummies. The dimensional corrections are listed below and shown in Figure 1 of this preamble, below:

- The 8.28 millimeter (mm) (32.6 inch (in)) dimension is changed to 828 mm (32.6 in);
- The 4.8 mm (188 in) dimension is changed to 4.8 mm (0.188 in);
- The 198.6 mm (7.75 in) dimension is changed to 196.8 mm (7.75 in).

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**FIGURE 22**

**PENDULUM SPECIFICATIONS**

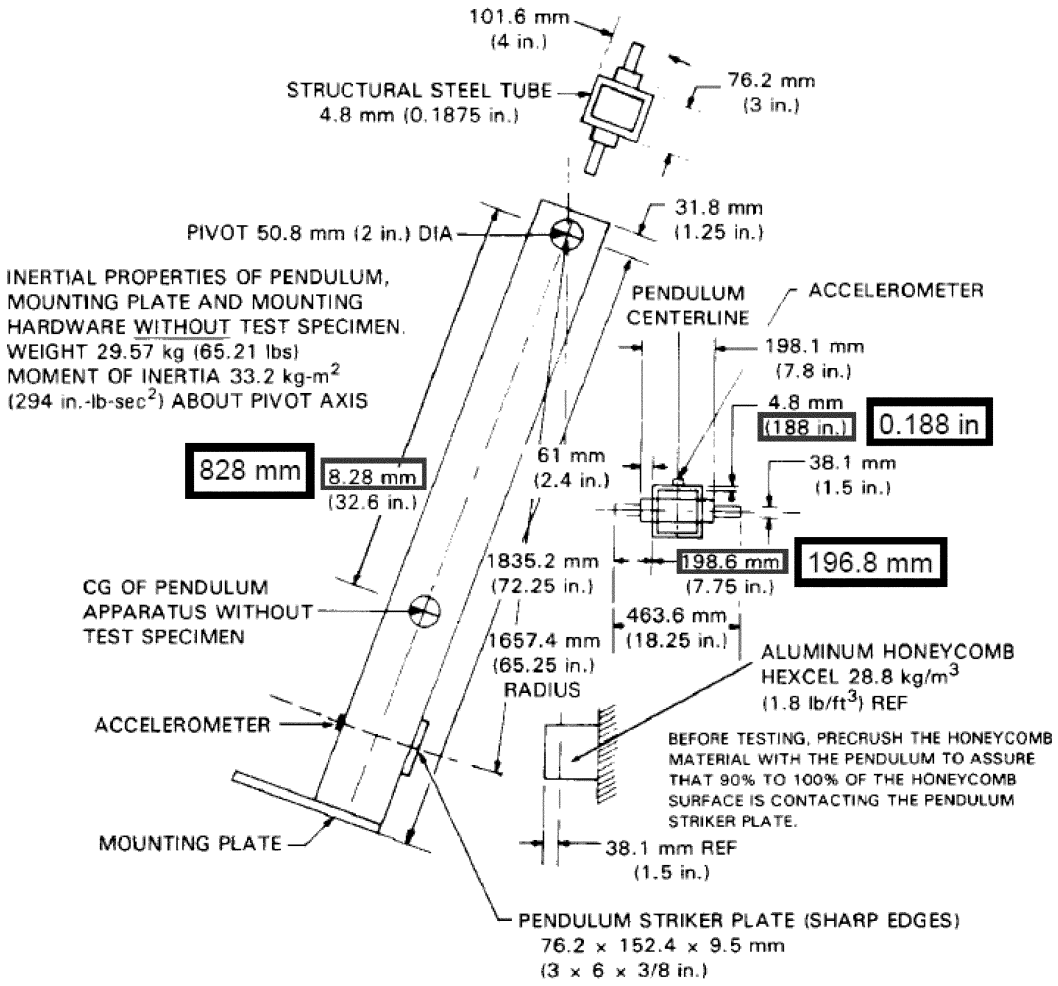


**Figure 1: Corrections to pendulum dimensions in Figure 22 of Section 572.33(c)(3)**

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## V. Rulemaking Analyses and Notices

*Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures*

This rulemaking action is not considered a significant regulatory action under E.O. 12866, E.O. 13563, or DOT's regulatory policies and procedures (44 FR 11034, February 26, 1979). This rule only corrects or makes slight changes to some of the drawings of the ES–2re test dummy and to the pendulum used in the neck qualification tests. These changes will not affect the cost of any of the part 572 test dummies. Because the economic impacts of this final rule are so minimal, no further regulatory evaluation is necessary.

*Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions), unless the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration's regulations at 13 CFR part 121 define a small business,

in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)).

We have considered the effects of this rulemaking under the Regulatory Flexibility Act. I hereby certify that the rulemaking action will not have a significant economic impact on a substantial number of small entities. This action will not have a significant economic impact on a substantial number of small entities because correcting or making minor changes to the drawings and the specification for the pendulum does not impose any requirements on anyone. NHTSA does not require anyone to manufacture or use the test dummies.

*National Environmental Policy Act*

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

*Executive Order 13132 (Federalism)*

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the final rule does not have federalism implications because 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." This rule will not impose any requirements on anyone. Businesses will be affected only if they choose to manufacture or test with the dummy.

Further, no consultation is needed to discuss the preemptive effect of today's final rule. NHTSA's safety standards can have preemptive effect in two ways. This final rule amends 49 CFR part 572 and is not a safety standard.[2] This part 572 final rule does not impose any requirements on anyone.

*Civil Justice Reform*

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows.

The issue of preemption is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid control number from the Office of Management and Budget (OMB). This rule will not have any requirements that are considered to be information collection requirements as defined by the OMB in 5 CFR part 1320.

*National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. There are no voluntary consensus standards relevant to this final rule.

*Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule does not impose any unfunded mandates under the UMRA. This rule does not meet the definition of a Federal mandate because it does not impose requirements on anyone. It amends 49 CFR part 572 by correcting or making minor changes to some of the drawings for a test dummy that the agency uses and for a pendulum used to calibrate test dummies. This rule affects only those businesses that choose to manufacture or test with the dummy, and being corrective in nature, only affects them in a small way. It does not result in costs of $100 million or more to either State, local, or Tribal governments, in the aggregate, or to the private sector.

*Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Has the agency organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could the agency improve clarity by adding tables, lists, or diagrams?

[2] With respect to the safety standards, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). Second, the Supreme Court has recognized the possibility of implied preemption: State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict exists, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

—What else could the agency do to make this rulemaking easier to understand?

If you have any responses to these questions, please send them to NHTSA.

*Regulation Identifier Number*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

**List of Subjects in 49 CFR Part 572**

Motor vehicle safety, Incorporation by reference.

In consideration of the foregoing, NHTSA amends 49 CFR part 572 as follows:

## PART 572—ANTHROPOMORPHIC TEST DEVICES

■ 1. The authority citation for part 572 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

## Subpart E—Hybrid III Test Dummy

■ 2. In § 572.33(c)(3), Figure 22 is revised to read as follows:

**§ 572.33 Neck.**

* * * * *

(c) * * *

(3) * * *

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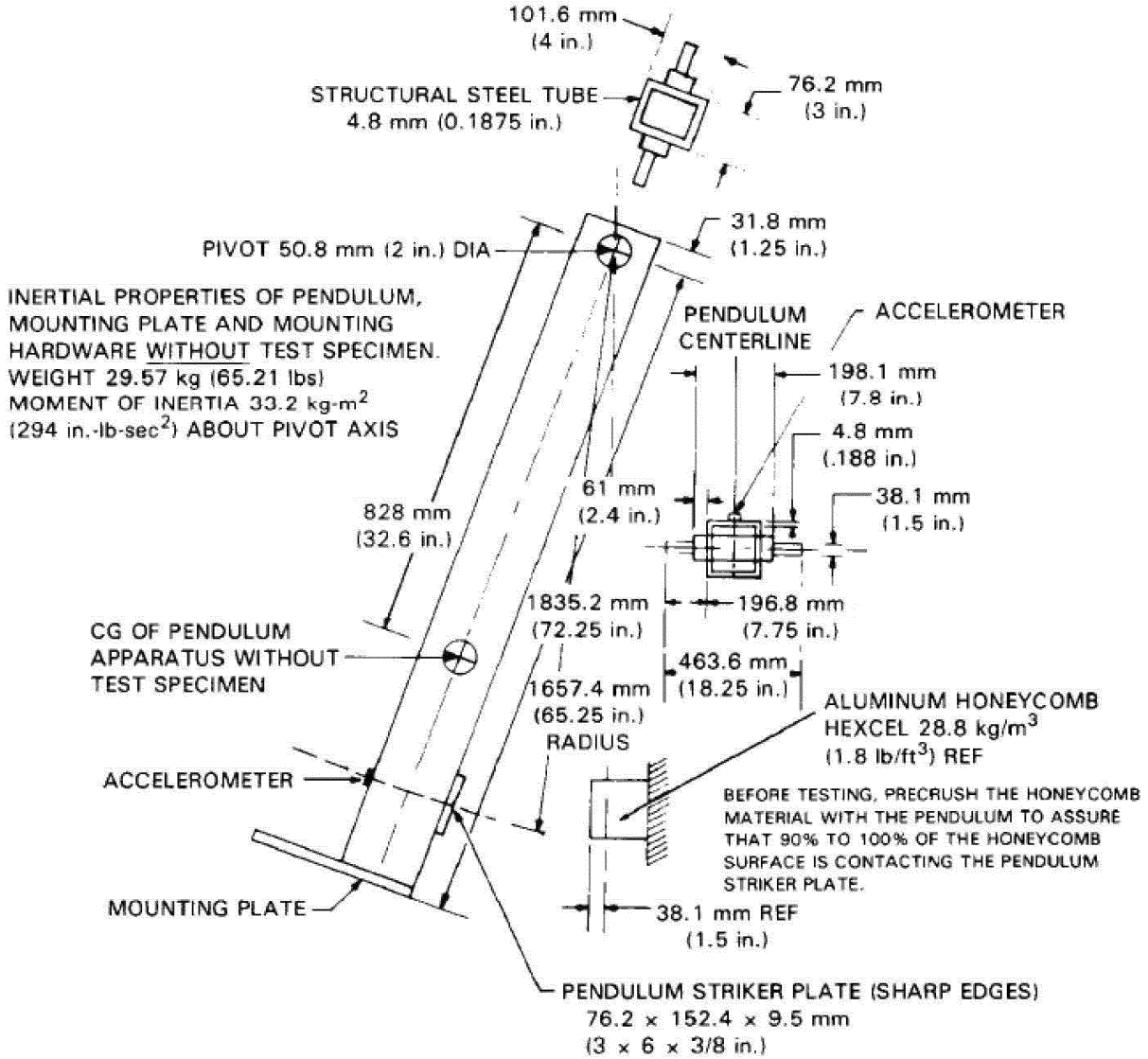
**FIGURE 22**

**PENDULUM SPECIFICATIONS**

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* * * * *

## Subpart U—ES–2re Side Impact Crash Test Dummy, 50th Percentile Adult Male

■ 3. Section 572.180 is amended by revising paragraphs (a)(1)and (a)(2), and paragraph (c)(1), to read as follows:

**§ 572.180 Incorporated materials.**

(a) * * *

(1) A parts/drawing list entitled, "Parts/Drawings List, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES2re), September 2009," incorporated by reference in § 572.181.

(2) A drawings and inspection package entitled "Parts List and Drawings, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES–2re, Alpha Version), September 2009," consisting of:

(i) Drawing No. 175–0000, ES–2re Dummy Assembly, incorporated by reference, see §§ 572.181, 575.182, 572.184;

(ii) Drawing No. 175–1000, Head Assembly, incorporated by reference in §§ 572.181 and 572.182;

(iii) Drawing No. 175–2000, Neck Assembly Test/Cert, incorporated by reference in §§ 572.181 and 572.183;

(iv) Drawing No. 175–3000, Shoulder Assembly, incorporated by reference in §§ 572.181 and 572.184;

(v) Drawing No. 175–3500, Arm Assembly, Left, incorporated by reference in §§ 572.181 and 572.185;

(vi) Drawing No. 175–3800, Arm Assembly, Right, incorporated by reference in §§ 572.181, and 572.185;

(vii) Drawing No. 175–4000, Thorax Assembly with Rib Extensions, incorporated by reference in §§ 572.181 and 572.185;

(viii) Drawing No. 175–5000, Abdominal Assembly, incorporated by reference in §§ 572.181 and 572.186;

(ix) Drawing No. 175–5500, Lumbar Spine Assembly, incorporated by reference in §§ 572.181 and 572.187;

(x) Drawing No. 175–6000, Pelvis Assembly, incorporated by reference in §§ 572.181 and 572.188;

(xi) Drawing No. 175–7000–1, Leg Assembly—left incorporated by reference in § 572.181;

(xii) Drawing No. 175–7000–2, Leg Assembly—right incorporated by reference in § 572.181;

(xiii) Drawing No. 175–8000, Neoprene Body Suit, incorporated by reference in §§ 572.181 and 572.185; and,

(xiv) Drawing No. 175–9000, Headform Assembly, incorporated by reference in §§ 572.181, 572.183, 572.187;

* * * * *

(c) * * *

(1) The Parts/Drawings List, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES2re) referred to in paragraph (a)(1) of this section, the Parts List and Drawings, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES–2re, Alpha Version) referred to in paragraph (a)(2) of this section, and the PADI document referred to in paragraph (a)(3) of this section, are available in electronic format through Regulations.gov and in paper format from Leet-Melbrook, Division of New RT, 18810 Woodfield Road, Gaithersburg, MD 20879, telephone (301) 670–0090.

* * * * *

■ 4. Section 572.181 is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 572.181 General description.**

(a) The ES–2re Side Impact Crash Test Dummy, 50th Percentile Adult Male, is defined by:

(1) The drawings and specifications contained in the "Parts List and Drawings, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES–2re, Alpha Version), September 2009," (incorporated by reference, see § 572.180), which includes the technical drawings and specifications described in Drawing 175–0000, the titles of which are listed in Table A;

TABLE A

| Component assembly | Drawing No. |
|---|---|
| Head Assembly | 175–1000 |
| Neck Assembly Test/Cert | 175–2000 |
| Neck Bracket Including Lifting Eyebolt. | 175–2500 |
| Shoulder Assembly | 175–3000 |
| Arm Assembly-Left | 175–3500 |
| Arm Assembly-Right | 175–3800 |
| Thorax Assembly with Rib Extensions. | 175–4000 |
| Abdominal Assembly | 175–5000 |
| Lumbar Spine Assembly | 175–5500 |
| Pelvis Assembly | 175–6000 |
| Leg Assembly, Left | 175–7000–1 |
| Leg Assembly, Right | 175–7000–2 |
| Neoprene Body Suit | 175–8000 |

(2) "Parts/Drawings List, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES2re), September 2009," containing 9 pages, incorporated by reference, see § 572.180,

(3) A listing of available transducers-crash test sensors for the ES–2re Crash Test Dummy is shown in drawing 175–0000 sheet 4 of 6, dated February 2008, incorporated by reference, see § 572.180,

(4) Procedures for Assembly, Disassembly and Inspection (PADI) of the ES–2re Side Impact Crash Test Dummy, February 2008, incorporated by reference, see § 572.180,

(5) Sign convention for signal outputs reference document SAE J1733 Information Report, titled "Sign Convention for Vehicle Crash Testing" dated December 1994, incorporated by reference, see § 572.180.

(b) Exterior dimensions of ES–2re test dummy are shown in drawing 175–0000 sheet 3 of 6, dated February 2008, incorporated by reference, see § 572.180.

(c) Weights of body segments (head, neck, upper and lower torso, arms and upper and lower segments) and the center of gravity location of the head are shown in drawing 175–0000 sheet 2 of 6, dated February 2008, incorporated by reference, see § 572.180.

* * * * *

Issued: May 24, 2011.

**David L. Strickland,**

*Administrator.*

[FR Doc. 2011–13413 Filed 6–1–11; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R4–ES–2008–0119; 92220–1113–0000–C6]**

**RIN 1018–AX01**

## Endangered and Threatened Wildlife and Plants; Reclassification of the Tulotoma Snail From Endangered to Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), reclassify the tulotoma snail (*Tulotoma magnifica*) from endangered to threatened, under the authority of the Endangered Species Act of 1973, as amended (Act). This action is based on a review of the best available scientific and commercial data, which indicates that the endangered designation no longer correctly reflects the status of this snail.

**DATES:** This final rule is effective on July 5, 2011.

**ADDRESSES:** This final rule is available on the Internet at *http://www.regulations.gov.* Comments and materials received, as well as supporting documentation used in preparing this final rule are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Jackson Ecological Services Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213 (telephone 601–321–1122; facsimile 601–965–4340).

**FOR FURTHER INFORMATION CONTACT:** Stephen Ricks, Field Supervisor, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213–7856 (telephone 601–321–1122; facsimile 601–965–4340). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:** This document consists of a final rule to reclassify the tulotoma snail (*Tulotoma magnifica*) from endangered to threatened, under the authority of the Act.

### Background

It is our intent to discuss only those topics directly relevant to the reclassification of the tulotoma snail from endangered to threatened. For information on our proposed

determination, refer to the proposed rule published in the **Federal Register** on June 22, 2010 (75 FR 35424).

The tulotoma snail (*Tulotoma magnifica*), henceforth "tulotoma," is a gill-breathing, operculate snail in the family Viviparidae. Operculate means that the snail has a rounded plate that seals the mouth of the shell while the snail is inside. The shell is spherical and can reach a size somewhat larger than a golf ball, and typically ornamented with spiral lines of knob-like structures (Herschler *et al.* 1990, p. 815). Its adult size and ornamentation distinguish it from all other freshwater snails in the Coosa-Alabama River system.

The tulotoma is found only in the State of Alabama. It was described from the Alabama River in 1834 by T.A. Conrad, and collection records indicate a historical range of around 563 kilometers (km) (350 miles (mi)) in the Coosa and Alabama River drainages of Alabama from the Coosa River in St. Clair and Calhoun Counties, Alabama, to the Alabama River in Monroe County, Alabama (Herschler *et al.* 1990, pp. 815–817). Historical collection localities in the Coosa River system included numerous sites on the river itself as well as the lower reaches of several of its large tributaries in St. Clair, Calhoun, Talladega, Shelby, Chilton, Coosa, and Elmore Counties, Alabama (Herschler *et al.* 1990, pp. 815–817). In the Alabama River system, the tulotoma was recorded only from two collection localities: The type locality near Claiborne, Monroe County, Alabama, and Chilachee Creek southwest of Selma, Dallas County, Alabama (Herschler *et al.* 1990, p. 815).

Tulotoma occur in cool, well-oxygenated, clean, free-flowing streams, including rivers and the lower portions of the rivers' larger tributaries (Herschler *et al.* 1990, p. 822). This species is generally found in shoals (a shallow place in a body of water) and riffles (a rocky shoal lying just below the surface of the water) with moderate to strong currents. Although this species is typically associated with shoals and riffles, it inhabits rivers that rise and fall, and tulotoma have been collected at depths more than 5 meters (m) (15 feet (ft)) (Hartfield 1991, p. 7). The species is strongly associated with boulder, cobble, and bedrock stream bottoms and is generally found clinging tightly to the underside of large rocks or between cracks in bedrock (Christman *et al.* 1996, p. 28). Historical habitats included large coastal plain river, large high-gradient rivers, and multiple upland tributary streams.

Based on a study of the tulotoma life history in the Coosa River below Jordan Dam, Elmore County, Alabama, tulotoma produce live-born offspring year round, but reproduction peaks during the months of May to July, and at sizes of about 3 to 5 millimeters (mm) (0.1 to 0.2 inches (in)) height of last whorl (HLW) or coil in a tulotoma shell (Christman *et al.* 1996, pp. 45–59). They grow rapidly during their first year reaching sizes of 11 to 14 mm (0.4 to 0.5 in), with females producing an average of 16 offspring in their second year (Christman *et al.* 1996, pp. 45–59). Females that live beyond their second year grow more slowly and produce an average of 28 juveniles per year (Christman *et al.*1996, pp. 45–59); few tulotoma survived longer than 2 years of life in the lower Coosa River (Christman *et al.* 1996, p. 61).

At the time of listing in 1991, the tulotoma was known from five localized areas in the lower Coosa River drainage (56 FR 797; January 9, 1991). These included approximately a 3-kilometer (km) (1.8-mile (mi)) reach (section of river) of the lower Coosa River between Jordan Dam and the City of Wetumpka (Elmore County, Alabama) and short reaches of four tributaries: 2 km (1.2 mi) of Kelly Creek (St. Clair and Shelby Counties, Alabama), 4 km (2.4 mi) of Weogufka Creek, and 3 km (1.8 mi) of Hatchet Creek (Coosa County, Alabama), and from a single shoal on Ohatchee Creek (Calhoun County, Alabama) (Herschler *et al.* 1990, p. 819). Each river reach is considered a population, and a population can contain one or more colonies. A colony is defined as the tulotoma found under one rock or several adjacent rocks. A site is considered a specific location within the river reach, where specific colonies are located.

Spatial distribution and trends of four of these five tulotoma populations (all populations except Ohatchee Creek) were monitored annually between 1992 and 1995, and again in 1999, and 2004 (DeVries 2005, p. 3). The lower Coosa River population has expanded throughout a 10-km (6-mi) reach (Hartfield 1991, Christman *et al.* 1996, pp. 23–25; DeVries 2005, p. 14), and the species' numbers in this reach are estimated at more than 100 million tulotoma (Christman *et al.* 1996, p. 59). Habitat in the Coosa River below Jordan Dam has improved and expanded due to implementation of a minimum flow regime below the dam and installation of an aeration system (Christman *et al.* 1996, p. 59; Grogan 2005, p. 3).

Colony size and distribution of tulotoma within the tributaries have been monitored and appear to be stable within a 13.7-km (8.5-mi) reach of Weogufka Creek, a 14-km (8.8-mi) reach of Hatchet Creek, and a 5.8-km (3.6-mi) reach of Kelly Creek (DeVries 2005, pp.11–13). Habitat conditions within these three tributaries appear to have remained stable since listing (DeVries 2005, p. 4; 2008, pp. 5–9). The Kelly Creek tulotoma population has expanded into suitable habitat in an approximately 8-km (5-mi) reach of the middle Coosa River above and below the confluence of Kelly Creek (Garner 2003, Powell 2005, Lochamy 2005), likely as a result of implementation of pulsing flows below Logan Martin Dam to improve dissolved oxygen levels (Krotzer 2008).

No tulotoma have been rediscovered from the Ohatchee Creek shoal population for 15 years, and it is now believed to be extirpated (DeVries 2005, pp. 10). Impacts of nonpoint source pollution at the Ohatchee shoal, including excessive sedimentation and algal growth, have been observed (Hartfield 1992).

Since its listing in 1991, tulotoma populations have also been located at six additional locations: Three in the Coosa River drainage and three in the Alabama River. (Garner 2003, 2006, 2008; DeVries 2005, p. 7; Johnson 2008). In the lower Coosa River drainage the tulotoma has been discovered surviving in a 0.8-km (0.5-mi) reach of Choccolocco Creek, a 0.4-km (0.25-mi) reach of Yellowleaf Creek, and about 2 km (1.2 mi) of Weoka Creek (DeVries 2005, pp. 10–13). The tulotoma population's range, colony size, and habitat in Choccolocco Creek have remained relatively stable since monitoring began in 1995 (DeVries 2005, p. 4). Tulotoma colony sizes in Weoka Creek have reached higher densities than any other tributary population; however, population trends have been monitored for only 3 years (DeVries 2005, p. 5). The Yellowleaf Creek tulotoma population is extremely localized (found in a small area in the creek that is isolated from other populations) and has not been monitored; however, occasional spot checks show the species continues to persist (Johnson 2006).

The other three new populations were discovered in the Alabama River, one below each of three dams: Claiborne Lock and Dam (one colony), R.F. Henry Lock and Dam (three colonies), and Millers Ferry Lock and Dam (one colony). A single localized colony was discovered near the type locality in the lower Alabama River below Claiborne Lock and Dam, Monroe County, Alabama (Garner 2006). Additionally, dead tulotoma shells were found in appropriate habitat over a 1.6-km (1.0-mi) reach of the Alabama River (Garner

2006). During the summer of 2008, two colonies were located near Selma, Dallas County, Alabama (Johnson 2008), and a single robust (healthy or vigorous) colony containing approximately 150 tulotoma was discovered below R.F. Henry Lock and Dam, Autauga and Lowndes Counties, Alabama (Garner 2008). Both juvenile and adult tulotoma were present at the three sites. A single localized colony was also discovered below Millers Ferry Lock and Dam, Wilcox County, Alabama (Powell 2008). For additional details about the expansion of the tulotoma range, see the Summary of Factors Affecting the Species section, below.

**Previous Federal Actions**

Federal actions for this species prior to June 22, 2010, are outlined in our proposed rule for this reclassification (75 FR 35424). Publication of the proposed rule opened a 60-day comment period, which closed on August 23, 2010.

**Recovery Achieved**

Recovery plans are not regulatory documents and are instead intended to establish goals for long-term conservation of listed species, define criteria that may be used to determine when recovery is achieved, and provide guidance to our Federal, State, other governmental and nongovernmental partners on methods to minimize threats to listed species. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and the species is robust enough to reclassify from endangered to threatened or to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

In 1994, the recovery goal, criteria, and tasks for the tulotoma were first proposed in the Technical/Agency Draft Mobile River Basin Aquatic Ecosystem Recovery Plan (Technical Draft Recovery Plan) (U.S. Fish and Wildlife Service 1994, p. 21). The Technical Draft Recovery Plan stated that the tulotoma could be reclassified to threatened status when a population study, in progress at the time, documented a stable or increasing population size due to flow and habitat improvements in the Coosa River below Jordan Dam (Devries 2005).

The 1994 draft plan received wide review and interest, which resulted in the formation of the Mobile River Aquatic Ecosystem Coalition (Ecosystem Coalition), formed by representatives of State and Federal agencies, and business and citizen groups from throughout the Mobile River Basin. The first task of the Ecosystem Coalition was to produce a draft of an ecosystem plan addressing all listed aquatic species in the Mobile River Basin. By the time the final Mobile River Basin Aquatic Ecosystem Recovery Plan (Recovery Plan) was published (U.S. Fish and Wildlife Service 2000), studies had been completed showing that the status of tulotoma in the Coosa River had improved considerably due to habitat improvements (Christman *et al.* 1996, DeVries 2005). Therefore, the recovery criterion for reclassification of tulotoma to threatened status was modified to recommend reclassification to threatened status upon completion of a status review confirming a stable or increasing population of tulotoma in the Coosa River below Jordan Dam (U.S. Fish and Wildlife Service 2000, p. 21).

Our recent 5-year review of the tulotoma documented an increase in the extent and size of tulotoma populations in the Coosa River below Jordan Dam, an increase in range and number of colonies and individuals in 3 of 4 tributary populations known at the time of listing, and discovery of 6 previously unknown populations (U.S. Fish and Wildlife Service 2008).

The 2000 Recovery Plan addressed protecting habitat integrity and improving habitat quality, reducing impacts from permitted activities, promoting watershed stewardship, conducting basic research, establishing propagation programs if necessary, and monitoring species' population size and distribution for all species addressed in the Recovery Plan. Some recovery actions accomplished in the Coosa River under this plan include the establishment of minimum flows below Jordan Dam to improve habitat conditions in that reach and the implementation of pulsing flows below Logan Martin Dam to improve dissolved oxygen in that reach. Watershed management plans have also been developed to address nonpoint source pollution in the lower Coosa Basin and the Alabama River Basin. These and other recovery accomplishments addressing threats to the tulotoma are presented in more detail in the Summary of Factors Affecting the Species section, below.

**Summary of Opportunity for Public Input**

During the open comment period for the proposed rule (75 FR 35424), we requested that all interested parties submit comments or information concerning the proposed reclassification of tulotoma from endangered to threatened. We directly notified and requested comments from the State of Alabama. We contacted all appropriate State and Federal agencies, county governments, elected officials, scientific organizations, and other interested parties and invited them to comment. We also published newspaper notices inviting public comment in the following newspapers: *Daily Home,* Talladega, Alabama; *Monroe Journal,* Monroe, Alabama; *Montgomery Advertiser,* Montgomery, Alabama; and *Selma Times Journal,* Selma, Alabama. During the comment period, we received no public comments.

**Peer Review**

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270) and the Office of Management and Budget's (OMB) December 16, 2004, Final Information Bulletin for Peer Review (OMB 2004), we requested the independent opinions of four knowledgeable individuals with expertise on the tulotoma, freshwater mollusks, the Mobile River Basin, and conservation biology principles. The purpose of such review is to ensure that the reclassification is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. We received a single comment from a peer reviewer stating that the proposed rule was comprehensive and accurate, and recommending that we include reference to a summary journal article that was not cited in the proposed rule. This article has been referenced, where appropriate, in the Background section, above.

**Summary of Factors Affecting the Species**

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from the Federal Lists of Endangered and Threatened Species. "Species" is

defined by the Act as including any species or subspecies of fish or wildlife or plants and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the "species" is determined, we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. Those factors are: (A) Habitat modification, destruction, or curtailment; (B) overutilization of the species for commercial, recreational, scientific or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in reclassifying or delisting a species. Listing, reclassifying, or delisting may be warranted based on any of the above threat factors, either singly or in combination.

For species that are already listed as threatened or endangered, an analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting.

The following threats analysis examines the five factors currently affecting, or that are likely to affect, the listed tulotoma snail within the foreseeable future. For the purposes of this analysis, we will first evaluate whether the currently listed species, the tulotoma, should be considered threatened or endangered throughout its range. If we determine that the species is threatened, then we will consider whether there are any significant portions of the species' range where it is in danger of extinction or likely to become endangered within the foreseeable future.

Under section 3 of the Act, a species is "endangered" if it is in danger of extinction throughout all or a significant portion of its range and is "threatened" if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The word "range" refers to the range in which the species currently exists, and the word "significant" refers to the value of that portion of the range being considered to the conservation of the species. The "foreseeable future" is the period of time over which events or effects reasonably can or should be anticipated, or trends extrapolated.

For the purposes of this analysis, we will evaluate all five factors currently affecting, or that are likely to affect, the tulotoma to determine whether the currently listed species is threatened or endangered. The five factors listed under section 4(a)(1) of the Act and their applications to tulotoma are presented below.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* When listed in 1991, the tulotoma was believed to inhabit less than 2 percent (12 km (7.2 mi)) of its 563-km (350-mi) historical range. A Coosa River population of tulotoma was known to survive below Jordan Dam. Populations were also known from four Coosa River tributaries: Kelly, Weogufka, Hatchet, and Ohatchee Creeks. All of these populations were isolated by dams and impounded waters and considered to be vulnerable to nonpoint source pollution. Population trends were unknown, but were believed to be possibly declining.

At the time of listing, hydropower discharges were limiting the range and abundance of tulotoma to only a 3-km (1.8-mi) reach of the Coosa River below Jordan Dam. Water discharges for hydropower purposes were released from Jordan Dam for 2.25 hours per day; at all other times, flow consisted of only dam seepage. As a result of the low water quantity, water quality problems, particularly low dissolved oxygen and elevated temperatures, were a significant limiting factor to tulotoma below Jordan Dam. In 1992, the Alabama Power Company (APC) established minimum flows in the Coosa River below Jordan Dam, and later installed a draft tube aeration system to ensure maintenance of dissolved oxygen levels at or above State standards (Grogan 2005, pp. 2–3). The APC also initiated studies to document the range, numbers, demographics, and life history of tulotoma in the reach of the Coosa River below Jordan Dam and to determine the effects of the new minimum flow regime (Christman *et al.* 1996, p. 18). Other studies were also conducted to monitor long–term population trends in this reach of the Coosa River (*e.g.,* De Vries 2005). Numerous tulotoma colonies have been discovered as a result of the monitoring efforts. With increased flows, additional colonies have become established in the upper portion of the reach and, in the downstream areas, the tulotoma has extended its range laterally within the channel in habitats made available by the constant minimum flows. Thousands of colonies consisting of more than 100 million tulotoma now inhabit a 10-km (6-mi) reach of the Coosa River below the Jordan Dam (Christman *et al.* 1996, p. 59; DeVries 2004, pp. 8–10, 2005 p. 14).

In 1991, tulotoma were also known to occur in 2 km (1.2 mi) of Kelly Creek, 4 km (2.4 mi) of Weogufka Creek, 3 km (1.8 mi) of Hatchet Creek, and from a single shoal on Ohatchee Creek (Herschler *et al.* 1990, p. 819). These four known tributary populations of tulotoma were considered to be extremely localized, vulnerable to water quality or channel degradation, and susceptible to decline and extirpation from effects of nonpoint source pollution and stochastic events within their respective watersheds. As a result of studies and surveys, we now know that the range of tulotoma is greater than estimated at the time of listing for three of these populations, and tulotoma is now known to occur in a 13.7-km (8.5-mi) reach of Weogufka Creek, a 14-km (8.8-mi) reach of Hatchet Creek, and a 5.8-km (3.6-mi) reach of Kelly Creek (DeVries 2005 pp. 11–13). Tulotoma colony sizes within these three populations have remained stable over a 12-year period (DeVries 2005, pp. 11–13). The Kelly Creek tulotoma population has expanded into an approximately 8-km (5-mi) reach of the middle Coosa River above and below the confluence of Kelly Creek (Garner 2003, Lochamy 2005, Powell 2005), likely as a result of implementation of pulsing flows below Logan Martin Dam to improve dissolved oxygen levels (Krotzer 2008). No tulotoma have been rediscovered in the Ohatchee Creek shoal population for 15 years, and, therefore, the population is now believed to be extirpated (DeVries 2005, p. 10).

Although the Ohatchee Creek population has apparently become extirpated since the time of listing (DeVries 2005, p. 10), other tributary stream surveys have located three populations in the Lower Coosa River drainage that were unknown at the time of listing. Tulotoma are now known from a 0.8-km (0.5-mi) reach of Choccolocco Creek, a 0.4-km (0.25-mi) reach of Yellowleaf Creek, and about 2 km (1.2 mi) of Weoka Creek (DeVries 2005, pp. 10–13). Although very localized, the Choccolocco Creek population has remained stable in colony size and numbers over the past decade (DeVries 2005, pp. 10–11). The Weoka Creek population has been sampled only twice since its discovery; however, tulotoma colonies are abundant in the stream reach, and average colony size is larger than any other tributary population (DeVries 2005, pp.13–14.) The Yellowleaf Creek population is localized, small, and has not been routinely monitored; however,

occasional spot checks show the species continues to persist (Johnson 2006).

Tulotoma colonies have also been discovered at three locations in the Alabama River: Near the type locality below Claiborne Lock and Dam in Monroe County, Alabama (Garner 2006); below Millers Ferry Lock and Dam in Wilcox County, Alabama (Powell 2008); and below Robert F. Henry Lock and Dam at a location in Autauga and Lowndes Counties, Alabama (Garner 2008), and at a locality in Dallas County, Alabama (Johnson 2008). The presence of juvenile and adult tulotoma in these three river reaches indicates that the newly discovered colonies are self-maintaining.

The 1991 listing rule (56 FR 797) noted the vulnerability of localized (isolated) tributary populations to nonpoint source pollution, specifically siltation from construction activities. The extirpation of the Ohatchee Creek population is suspected to be due to sedimentation and nutrient enrichment from nonpoint sources in the watershed. Although other monitored tulotoma populations have remained stable or expanded since listing, they remain vulnerable to water and habitat quality degradation, particularly in the tributaries. Lower Choccolocco Creek is on the State list of impaired waters for organic pollution due to contaminated sediments (Alabama Department of Environmental Management (ADEM) 2006, p. 5). Yellowleaf Creek and several other lower Coosa River watersheds have been identified as High Priority Watersheds (*i.e.,* vulnerable to degradation) by the Alabama Clean Water Partnership (ACWP) (ACWP 2005a, Chapter 12) due to the high potential of nonpoint source pollution associated with expanding human population growth rates and urbanization. For example, the headwaters of Yellowleaf Creek are about 5 km (3 mi) southeast of the greater metropolitan area surrounding Birmingham, Alabama, and the watershed is highly dissected by county roads. High sediment discharge has been identified as an issue in Kelly Creek (ACWP in prep., p. 43), and potential fecal coliform problems have been documented at several locations in Choccolocco Creek (ACWP in prep., p. 38). However, the ACWP has also developed locally endorsed and supported plans to address nonpoint source pollution and maintain and improve water quality in the lower Coosa River Basin (ACWP 2005a, pp. 3.1–3.48) and in the middle Coosa River Basin (AWCP in prep., pp. 49–50) (see Factor D. below for further detail on monitoring plans). Full implementation of current programs and plans will reduce the vulnerability of tributary populations to nonpoint source pollution.

*Summary of Factor A:* The range of tulotoma has increased from 6 populations in 1991, occupying 2 percent of its historical range, to a total of 10 populations, occupying 10 percent of the historical range. In addition, these populations are found in a wide range of historically occupied habitats, including large coastal plain rivers, large high-gradient rivers, and multiple upland tributary streams. Populations known at the time of listing have been monitored, and with the exception of Ohatchee Creek, were found to be stable or increasing. Four of the six populations discovered since 1991 have been monitored for 2 to 12 years. The Choccolocco Creek population has remained stable for 12 years. The Yellowleaf Creek population has not been routinely monitored, and we cannot determine a population trend beyond mere presence or absence; however, occasional spot checks show the species continues to persist (Johnson 2006). The Weoka Creek and Lower Alabama River populations have been observed and monitored for a period of 4 and 2 years, respectively; however, this is not a sufficient amount of time to be able to determine a population trend.

Habitat-related threats have been addressed in the Coosa River through establishing minimum flows or pulsing flows below Jordan and Logan Martin Dam, respectively. Habitat conditions have improved; occupied habitat has expanded in the Coosa River below Jordan Dam; and tulotoma numbers are now estimated at greater than 100 million individuals. The ranges of tulotoma populations in Kelly, Weogufka, and Hatchet Creek have expanded 2- to 5-fold since listing. Tulotoma colony densities within these populations have remained stable or increased.

Tulotoma remains extirpated from approximately 90 percent of its historical range, and surviving populations remain isolated, localized, and vulnerable to nonpoint source pollution. These conditions are expected to continue for the foreseeable future. While monitored populations have persisted and expanded over the past two decades, and a program to address nonpoint source pollution in the Coosa and Alabama Rivers and their tributaries has been established by ACWP and ADEM, the tulotoma continues to be threatened by the destruction, modification, or curtailment of its habitat and range such that the tulotoma is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization was not a threat when the species was listed in 1991, but the final listing rule noted the vulnerability and susceptibility of the localized populations to overcollecting should the tulotoma, with its ornate shell, become important to the commercial pet trade (56 FR 797; January 9, 1991). However, there has been no evidence to date that any commercial use in the pet trade industry has occurred.

In summary, overutilization for any purpose is not currently considered a threat to tulotoma, and is not likely to become a threat within the foreseeable future.

C. *Disease or predation.* The January 9, 1991, final rule (56 FR 797) listing the tulotoma found no evidence of disease or predation as a threat, and we are not aware of any evidence since listing that suggests tulotoma is currently threatened by disease or predation or likely to become so within the foreseeable future.

D. *The inadequacy of existing regulatory mechanisms.* At the time of the 1991 listing, existing laws were considered inadequate to protect the tulotoma. The species was not officially recognized by Alabama as needing any special protection or given any special consideration under other environmental laws when project impacts were reviewed.

Tulotoma are now protected from collection or commerce under Alabama Nongame Species Regulations 220–2–92. In addition, the Alabama Department of Conservation and Natural Resources (ADCNR) recognizes tulotoma as a Species of Highest Conservation Concern (Mirarchi *et al.* 2004, p. 120; ADCNR 2005, p. 301). The persistence of tulotoma and the improvement of some populations over time is an indication that existing regulatory mechanisms are now providing some measure of consideration and protection of the species. For example, the Alabama Total Maximum Daily Load (TMDL) Program has been implemented to identify and reduce water pollution in impaired waters (ADEM 2007). Under this program, Choccolocco Creek has been identified as impaired, and plans are under development to remove contaminated sediments.

The ACWP has been organized to educate and coordinate public participation in water quality issues, particularly nonpoint source pollution

and implementation of TMDLs (*http://www.cleanwaterpartnership.org*). The ACWP, in coordination with ADEM, has developed a Lower Coosa River Basin Management Plan and an Alabama River Basin Management Plan to address nonpoint source pollution and watershed management issues (AWCP 2005a, p. I; AWCP 2005b, pp. xv–xvii). The Lower Coosa Plan includes the watersheds of the Yellowleaf, Weogufka, Hatchet, and Weoka Creek populations, along with the Coosa River below Jordan Dam, while the Alabama River Basin Plan includes the watersheds of the newly discovered Alabama River tulotoma population. A draft Middle Coosa River Basin Management Plan, which includes Choccolocco and Kelly Creeks, is under development (AWCP in prep., pp. i, v–vi, 43). These plans are a mechanism to identify water quality problems in the drainages, educate the public, and coordinate activities to maintain and improve water quality in the basins; however, they have yet to be fully implemented.

Federal status under the Act continues to provide additional protections to the tulotoma not available under State laws. For example, during recent water shortages due to an extended drought in the Southeast, emergency consultation under section 7 of the Act was conducted between the Service, Federal Energy Regulatory Commission (FERC), and APC representatives on efforts to conserve water by decreasing minimum flows below Jordan Dam. The consultation identified measures to be implemented to minimize impacts to tulotoma and monitor the effects of the reductions (*e.g.,* FERC 2007, pp. 1–8).

*Summary of Factor D:* Although additional regulatory mechanisms have been developed since listing including Alabama's regulations to prevent collection or commerce and various water quality programs and initiatives, tulotoma drainage populations require further regulations that would ensure improved water quality and water availability in some areas. At present, without the protections of the Act, the tulotoma remains threatened by the inadequacy of existing regulatory mechanisms such that it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

E. *Other natural or manmade factors affecting its continued existence.* Random or stochastic events such as droughts and chemical spills, and genetic drift were identified in the final listing rule as threats to the species due to its restricted range, isolation of the populations, and lack of genetic exchange between populations. The tulotoma's restricted range and isolation remain the greatest cause of concern for the species' continued existence and are factors that compound the effects of the other threats identified above. Within its respective watersheds, each population is vulnerable to changes in land use that might result in detrimental impacts (*e.g.,* urbanization and increased nonpoint source pollution). All populations also remain independently vulnerable to stochastic threats such as droughts or chemical spills. These threats, however, have been somewhat offset by the extension of the ranges of the populations known at listing and by the discovery of additional populations within the historical range of the species.

In general, larger populations are more resilient to stochastic events than extremely small populations. For example, due to the extended 2007 drought in the Southeast, minimum flows below Jordan Dam were reduced in order to conserve water in upstream reservoirs for water supply and hydroelectric production. The reduction in flows led to high amounts of suspended algal material and fine sediment, which are harmful to tulotoma (Powell 2008) and resulted in the stranding and estimated mortality of more than 73,000 tulotoma in the Coosa River below Jordan Dam (APC 2008, p. 43). Although this loss seems relatively insignificant in a population estimated at more than 100 million individual tulotoma, it demonstrates the vulnerability of range-restricted populations to stochastic events.

The documentation of more tulotoma populations (since listing) distributed in different watersheds makes rangewide extinction from localized activities or stochastic threats less likely. In addition, although populations remain isolated from each other, the robust size of most populations reduces the threat of genetic drift and bottlenecks. However, each tulotoma population remains vulnerable to natural or human-induced stochastic events within its respective watershed, as demonstrated by the loss of the Ohatchee Creek population. Assessments of tributary populations following the severe 2007 drought found little to no changes in distribution or density of the tulotoma in Kelly, Weogufka, Hatchet, or Choccolocco Creeks (DeVries 2008, p. 3–15). However, tulotoma recruitment was not observed in the Choccolocco Creek population (DeVries 2008, pp. 9–11), and colony densities had declined at Weoka Creek (DeVries 2008, p. 15). The assessment was unable to determine if the Weoka Creek tulotoma decline was attributed to the drought or human impacts (DeVries 2008, p. 15).

*Summary of Factor E:* Although extension of the ranges of tulotoma populations and discovery of additional populations makes rangewide extinction from localized activities or stochastic threats less likely, all tulotoma populations remain individually vulnerable to stochastic threats such as drought and chemical spills and threatened by changes in land use. Given the relatively small number of populations, Factor E is still a threat to the tulotoma such that it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

**Conclusion of the Five-Factor Analysis**

In developing this rule, we have carefully assessed the best scientific and commercial data available regarding the threats facing this species, as well as the ongoing conservation efforts. Although reduced, three of the five listing factors continue to pose a known threat to the tulotoma: The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A); inadequacy of regulatory mechanisms (Factor D); and other natural or manmade factors affecting its continued existence (Factor E).

The Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 2000) (see "Recovery Achieved" above) states that the tulotoma should be considered for reclassification from endangered to threatened status when an updated status review of the species is completed and a stable or increasing tulotoma population in the Coosa River below Jordan Dam is confirmed. The 5-year review of the status of tulotoma, completed in 2008, documented an increase in extent and size of tulotoma populations in the Coosa River, Kelly Creek, Weogufka Creek, and Hatchet Creek (U.S. Fish and Wildlife Service 2008). Threats to the species have also been reduced through habitat improvements in the Coosa River, identification of six drainage populations of the species that were unknown at the time of listing, development of watershed management plans, and protection of tulotoma under State laws. However, delisting criteria for the tulotoma have not been met as watershed plans that protect and monitor water quality and habitat quality in occupied watersheds have not been fully implemented.

Recovery plans are intended to guide and measure recovery. Recovery criteria for downlisting and delisting are developed in the recovery planning

process to provide measureable goals on the path to recovery; however, precise attainment of all recovery criteria is not a prerequisite for downlisting or delisting. Rather, the decision to change the status of a listed species under the Act is based on the analysis of the 5 listing factors identified in section 4 of the Act. The Act provides for downlisting from endangered to threatened when the best available data indicate that a species, subspecies, or distinct population segment is no longer in danger of extinction throughout all or a significant portion of its range.

Based on the analysis above and given the reduction in threats, the tulotoma is not currently in danger of extinction throughout all its range. In the section that follows, we consider whether it is in danger of extinction in a significant portion of its range.

**Significant Portion of the Range Analysis**

Having determined that the tulotoma snail is no longer endangered throughout its range as a consequence of the threats evaluated under the five factors in the Act, we must next consider whether there are any significant portions of its range where the species is currently endangered. A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species as evaluated based upon its representation, resiliency, or redundancy.

The first step in determining whether a species is endangered in a significant portion of its range is to identify any portions of the range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are not significant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether the species is in fact endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to address the significance question first, and in others the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is endangered there. Conversely, if the Service determines that the species is not endangered in a portion of its range, the Service need not determine if that portion is significant.

For the tulotoma we applied the process described above to determine whether any portions of the range warranted further consideration. Habitat quality is variable throughout the range of the tulotoma. However, the basic biological components necessary for the tulotoma to complete its life history are present throughout the areas currently occupied by each population, and there is no particular location or area that provides a unique or biologically significant function necessary for tulotoma recovery. The quantity of habitat available to each surviving population of tulotoma is also variable.

Although the threats identified above are common to all areas currently occupied by tulotoma, the magnitude of the threats are likely higher in the stream reaches where tulotoma colonies are currently extremely localized, such as Yellowleaf and Choccolocco Creeks and the Alabama River. However, due to habitat limitations and the resulting small range of tulotoma in each of these stream reaches (each less than 2 percent of currently occupied range) they are not significant to the species in a noticeable or measurable way. In addition, we concluded through the five-factor analysis that the existing or potential threats (Factors A, D, and E) are uniform throughout its range, and there is no portion of the range where one or more threats is geographically concentrated. Therefore, we have determined that there are no portions of the range that qualify as a significant portion of the range in which the tulotoma is in danger of extinction currently or within the foreseeable future.

As required by the Act, we considered the five potential threat factors to assess whether tulotoma is endangered or threatened throughout all or a significant portion of its range. Based on habitat improvements, the numbers of tulotoma populations now known (10 populations found in 8 discrete drainages), the robust size of most of these populations (numbering in the thousands to tens of millions of individual tulotoma), the stability of monitored populations over the past 15 years, and current efforts toward watershed quality protection, planning, and monitoring, we have determined that none of the existing or potential threats, either alone or in combination with others, are likely to cause the tulotoma to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. However, we have determined that threats to the tulotoma still exist, specifically as a result of water quality and quantity issues as discussed under Factors A, D, and E. Due to these continued threats, the tulotoma meets the definition of threatened in that it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, we are reclassifying the tulotoma's status from endangered to threatened under the Act.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing increases public awareness of threats to the tulotoma, and promotes conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States, and provides for recovery planning and implementation. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to the tulotoma. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect the tulotoma or its habitat, the responsible Federal agency must consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the tulotoma. Federal agency actions that may require consultation include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, codified at 50 CFR 17.21 and 50 CFR 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harm, harass, and pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species of wildlife. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to Service agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in the course of otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the U.S. Fish and Wildlife Service, Ecological Services Office, 1208–B Main Street, Daphne, Alabama 36526 (telephone 251/441–5181). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (telephone 404/679–7217, facsimile 404/679–7081).

## Effects of This Rule

This rule revises 50 CFR 17.11(h) to reclassify the tulotoma from endangered to threatened on the List of Endangered and Threatened Wildlife. However, this reclassification does not significantly change the protection afforded this species under the Act. Anyone taking, attempting to take, or otherwise possessing a tulotoma, or parts thereof, in violation of section 9 is subject to a penalty under section 11 of the Act. Pursuant to section 7 of the Act, all Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the tulotoma.

Recovery objectives and criteria for tulotoma will be revised in the Recovery Plan. Recovery actions directed at the tulotoma will continue to be implemented as outlined in the current Recovery Plan (U.S. Fish and Wildlife Service 2000), including: (1) Protecting habitat integrity and quality; (2) informing the public about recovery needs of tulotoma; (3) conducting basic research on the tulotoma and applying the results toward management and protection of the species and its habitats; (4) identifying opportunities to extend the range of the species; and (5) monitoring the populations.

Finalization of this rule does not constitute an irreversible commitment on our part. Reclassification of the tulotoma to endangered status would be possible if changes occur in management, population status, habitat, or other actions that would detrimentally affect the populations or increase threats to the species.

## Required Determinations

*Data Quality Act*

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

*Paperwork Reduction Act of 1995*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

We have determined that we do not need to prepare an Environmental Assessment or Environmental Impact Statement, as defined in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands affected by this rule.

*Energy Supply, Distribution or Use (E.O. 13211)*

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

## References Cited

A complete list of references cited is available at *http://www.regulations.gov* in Docket No. FWS–R4–ES–2008–0119 and upon request from the Jackson, Mississippi Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

## Author

The primary author of this document is Paul Hartfield, Jackson, Mississippi Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Regulation Promulgation

Therefore, for the reasons stated in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry in the List of Endangered and Threatened Wildlife for "Snail, tulotoma" under SNAILS to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | | * | * | |
| SNAILS | | | | | | | |
| * | * | * | * | | * | * | |
| Snail, tulotoma | *Tulotoma magnifica* | U.S.A. (AL) | Entire | T | 412, 789 | NA | NA |
| * | * | * | * | | * | * | |

* * * * *

Dated: May 18, 2011.

**Gregory E. Siekaniec,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2011–13687 Filed 6–1–11; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 110321211–1289–02]**

**RIN 0648–BA94**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag Grouper Management Measures

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

**ACTION:** Final temporary rule.

**SUMMARY:** This final temporary rule, issued pursuant to NMFS' authority to issue emergency and interim rules under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), replaces a temporary rule made effective January 1, 2011, and implements interim measures to reduce overfishing of gag in the Gulf of Mexico (Gulf). This rule reduces the commercial quota for gag and, thus, the combined commercial quota for shallow-water grouper species (SWG), establishes a 2-month recreational season for gag, and suspends red grouper multi-use allocation in the Gulf grouper and tilefish individual fishing quota (IFQ) program, as recommended by the Gulf of Mexico Fishery Management Council (Council). The rule will be effective for 180 days, unless superseded by subsequent rulemaking, although NMFS may extend its effectiveness for an additional 186 days pursuant to the Magnuson-Stevens Act. The intended effect of this final temporary rule is to reduce overfishing of the gag resource in the Gulf.

**DATES:** This rule is effective June 1, 2011, through November 29, 2011.

**ADDRESSES:** Electronic copies of documents supporting this final rule, which include an environmental assessment, a regulatory impact review, and a regulatory flexibility act analysis may be obtained from the Southeast Regional Office Web site at: *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, Southeast Regional Office, NMFS, telephone: 727–824–5305, or e-mail: *Peter.Hood@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On April 21, 2011, in response to a finding that the gag resource continues to be overfished and experiencing overfishing, NMFS published a proposed temporary rule that is finalized here, and requested public comment on that proposal (76 FR 22345).

This final temporary rule reduces the commercial quota for gag from 1.49 million lb (0.68 million kg) to 430,000 lb (195,045 kg), reduces the commercial SWG quota from 6.22 million lb (2.82 million kg) to 5.16 million lb (2.34 million kg), suspends red grouper multi-use allocation in the Gulf grouper and tilefish IFQ program, and implements a recreational fishing season for gag from September 16 through November 15, with a 2-fish daily bag limit. The purpose of this final temporary rule is to reduce overfishing of the gag resource in the Gulf. No changes from the proposed temporary rule were made to this final rule as a result of public comment.

This action reduces the commercial quota for SWG species to 5.16 million lb (2.34 million kg) from the 6.22 million lb (2.82 million kg) SWG quota which was implemented through a regulatory amendment to the FMP on January 1, 2011 (75 FR 74656, December 1, 2011). Because a gag interim rule that reduced the SWG quota even further became effective that same day on January 1, 2011 (75 FR 74650, December 1, 2011), NMFS delayed effectiveness of the 6.22 million lb (2.82 million kg) quota until further notification in the **Federal Register**. This temporary final rule further delays the effectiveness of the 6.22 million lb (2.82 million kg) SWG quota and implements a reduced SWG quota of 5.16 million lb (2.34 million kg). After termination or expiration of this interim final rule, the timing of which is uncertain, NMFS will announce the effective date of the 6.22 million lb (2.82 million kg) SWG quota, unless this rule is superseded by subsequent rulemaking.

### Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and NMFS' respective responses. During the comment period, NMFS received 24 comments on the proposed rule. Three comments from non-governmental organizations supported the management measures contained in the proposed temporary rule. The remaining comments came primarily from the recreational sector of the Gulf reef fish fishery, as well as one state agency and one commercial fisherman. Those comments opposed one or more of the management measures contained in the proposed temporary rule, and are addressed below.

*Comment 1:* A number of commenters questioned the scientific basis used to assess the gag stock and how scientific information was applied to support fishery management decisions. They indicated the data NMFS used were outdated or flawed, or in some cases data were ignored.

*Response:* Stock assessments are conducted under the scientifically peer reviewed Southeast Data, Assessment,

and Review (SEDAR) process, which was initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. SEDAR seeks improvements in the scientific quality of stock assessments and supporting information available to address existing and emerging fishery management issues. This process emphasizes constituent and stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. SEDAR is organized around 3 workshops: data, assessment, and expert review. The data workshop documents, analyzes, and reviews datasets to be used for assessment analyses. The assessment workshop develops and refines quantitative population analyses and estimates population parameters. The final workshop is conducted by a panel of independent experts who review the data and the assessment and recommend the most appropriate values of critical population and management quantities. The 2006 gag assessment and 2009 update assessment were conducted using the SEDAR process, including 2010 assessment reanalyses to better account for discarded fish. All of these assessments were used in determining the management measures contained in this temporary rule. All workshops and Council-initiated meetings reviewing the assessment were open to the public and included constituent participation on the various SEDAR panels to ensure the transparency of the data and how it was applied in the assessments. In addition, the Council's Scientific and Statistical Committee (SSC) reviewed assessment results and made recommendations to the Council about the adequacy of the assessments and at what level to set the acceptable biological catch. The Council took all of this information into consideration when recommending the management measures contained in this temporary rule. The finding of the SSC and Council are therefore the result of rigorous application of scientific principles.

*Comment 2:* Several individuals questioned that red tide could be responsible for the 2005 mortality event modeled in the gag update assessment.

*Response:* Red tide is believed to have contributed to the 2005 episodic mortality event. In the 2009 update assessment, 10 models were run that varied different parameters within the assessment. The model with the best fit was one which took into account decreases in indices of abundance thought to have occurred because of the red tide event documented in 2005. Although this model cannot show a direct link between the red tide event and the decrease in gag abundance, it does indicate a variable was present in 2005 that depressed the stock size. The assessment panel felt that the 2005 red tide event was the factor that best explained this depressed stock.

*Comment 3:* Several commenters indicated gag are plentiful and, therefore, further management measures beyond those in place in 2010 are unnecessary. Other commenters indicated that although the gag population does seem depressed, the proposed management measures seem overly restrictive. Several commenters suggested alternative management measures including different seasonal closures, reduced bag limits, or increased size limits.

*Response:* The 2006 assessment and 2009 update assessment for gag used a variety of data including those from fishery dependent and fishery independent sources. Several models were used including models that took into account a 2005 episodic mortality event. These models consistently indicated the gag stock was depressed. The model recommended by the Council's SSC was the one that took into account the 2005 episodic mortality event, and that best explained the current estimated gag numbers. This model indicated the stock was overfished and undergoing overfishing, prompting NMFS to inform the Council of this condition and that, pursuant to the Magnuson-Stevens Act, the stock needs to be rebuilt. There was some question about the model results because of how discards were estimated in the model. A SEDAR panel was convened to address these questions and reanalyzed the 2009 update assessment. The reanalysis of the assessment did not substantially alter the assessment outcome, that the stock was overfished and undergoing overfishing.

In evaluating different management measures, the Council examined alternative seasonal closures, area closures, bag limits, and size limits. Because of the magnitude of discards by the recreational sector, only the seasonal closure alternatives would meet the required reductions. Bag limit changes would not substantially change season lengths. Reducing size limits would substantially shorten the season length, and increasing size limits would substantially increase the number of dead discards. Public testimony given at Council meetings either favored a summer or winter season, depending on where people fished. In general, fishermen from Texas and southwest and central Florida favored a winter season, and fishermen from other areas of the Gulf favored a summer season. In seeking a compromise, the Council recommended a fall season because it starts at the very end of the summer and comes very close to the winter months. A fall season maximizes the number of days gag would be open for fishing.

*Comment 4:* One commenter indicated regionalized gag management should be considered to allow a greater proportion of the gag harvest to occur in areas where gag are more abundant.

*Response:* Considering regionalized management is outside the scope of this rulemaking because such an approach would not directly reduce overfishing, as required by the Magnuson-Stevens Act. However, the Council continues to examine regionalized management for reef fish species. In the course of developing long-term management measures in Amendment 32 to the FMP, the Council is considering seasonal-area closures for grouper species which are considered to be a type of regionalized management.

*Comment 5:* Several commenters indicated the management actions contained in this temporary rule favor the commercial sector over the recreational sector. These commenters suggest that the commercial sector should either be closed, not be allowed to use longline gear, or only harvest gag when the recreational sector is open.

*Response:* When the allocation of gag harvest was developed for the recreational and commercial sectors in Amendment 30B to the FMP, it was based on average landings for each sector between 1986 and 2005. The resultant recreational and commercial allocation ratio is 61:39, respectively. The management measures contained in this temporary rule were designed to equally reduce the number of gag removals (harvest and dead discards) for each sector to maintain this allocation ratio. Thus, while the recreational regulations may seem more restrictive, they actually allow for a much greater recreational harvest than will be allowed for the commercial sector. It is beyond the scope of this temporary rule to change the allocation ratio. It is also beyond the scope of this temporary rule to ban longline gear; however, recently implemented management measures contained in Amendment 31 to the FMP have reduced the number of longline vessels and further limited where longline vessels can fish.

The commercial sector is managed under an IFQ program where individual fishermen are given an allocation of gag

based on the commercial quota and the number of IFQ shares owned by the fisherman. This individual allocation allows commercial fishermen more flexibility in how they can fish, including fishing year round as long as they still have allocation remaining. If the commercial sector was not allowed to keep gag when the recreational sector was closed, dead discards would increase. Because the commercial sector fishes in waters deeper than where most of the recreational sector fishes, the likelihood of catching undersized fish is less and the chance a discarded fish would die if released is very high. Therefore, by allowing the commercial sector to keep gag year-round as long as an individual fisherman still has allocation, gag could be counted towards the quota and not wasted.

*Comment 6:* Several commenters indicated fishing effort is down due to current economic conditions, including increased fuel prices.

*Response:* In developing fishing regulations to limit harvest, recent fishing effort levels are taken into account. Recent data would reflect trends in effort due to factors such as changes in the economy. For example, as described in the environmental assessment, effort in 2009 was below the 2005–2008 average, in part due to changing economic conditions. In addition, in recommending the management measures contained in this temporary rule, the Council heard testimony from constituents who described current conditions in the fishery, including the effects of the economic situation, and how they perceived the rule would affect them.

*Comment 7:* One commenter questioned why the proposed rule would remove § 622.34 paragraph (v) from the regulations and replace it with § 622.34 paragraph (w).

*Response:* Section 622.34, paragraph (v), was implemented through a 2010 temporary rule and prohibits the harvest and possession of gag in the Gulf exclusive economic zone (EEZ). The 2010 temporary measure expires on May 31, 2011, unless subsequent rulemaking supersedes this measure. Because the timing of implementation of this new temporary rule was uncertain at the proposed rule stage, the rule proposed to remove paragraph (v) and add paragraph (w) to § 622.34. However, because this new temporary rule will become effective on June 1, 2011, after the current temporary rule expires, NMFS can now add new paragraph (v) instead of paragraph (w) to § 622.34. The new paragraph (v) implements a recreational gag seasonal closure in the Gulf EEZ by setting the gag bag limit to zero from January 1 through September 15, and from November 16 through December 31. This would allow a recreational gag harvest from September 16 through November 15 under a 2-fish bag limit. This paragraph would also be temporary and would remain in effect for 180 days from the rule's publication date, and could be extended for up to an additional 186 days.

*Comment 8:* One commenter suggested one of the purposes of this proposed rule is to force catch shares on the recreational sector. Another commenter stated his opposition to IFQs in general.

*Response:* The development of catch shares and IFQ programs as management tools is completely unrelated to this rule. The purpose of this rule is to reduce overfishing of gag, as required by the Magnuson-Stevens Act. Catch shares, or changes to the IFQ program, if considered, would be examined through the deliberative Council system and evaluated through a plan amendment to the FMP.

*Comment 9:* Several commenters expressed concern over the magnitude of the economic effects on the recreational sector and associated shore-side businesses expected to occur as a result of the proposed temporary rule, and one comment stated that the economic assessment grossly and inadequately understated the economic effects of the recreational component of the proposed action.

*Response:* The magnitude of the expected economic effects on all affected entities provided in the assessment is consistent with the comments that expressed concern over the magnitude of the economic effects. Substantial gag harvest reductions are necessary, however, to reduce overfishing of the gag resource, and the actions selected are expected to result in the best social and economic outcome.

The comment that claimed the economic assessment grossly and inadequately understated the economic effects claimed that the proposed action would result in the loss of 5,000 jobs and $3 billion in economic activity per year in Florida. This comment also implied that the analysis for the proposed action determined that the total economic value of both gag and red grouper to the recreational fishing industry is only $118 million when the total economic value of saltwater fishing in west Florida is $23 billion.

The estimates of the expected losses in jobs and economic activity provided by this comment were unsubstantiated by either source or methodology, and the "$118 million" estimate of economic value, or a reasonable proxy, cannot be found in the analysis provided for the proposed temporary rule or associated environmental assessment. Therefore, the origin of any of these numbers is unknown.

The assessment of the expected economic effects of the recreational component of the proposed temporary rule included estimates of the expected changes in economic value, as measured by changes in consumer surplus (CS) to recreational anglers and net operating revenues (NOR) to for-hire businesses, and economic impact, also known as economic activity or business activity. Economic activity estimates provide a measure of how expenditures re-circulate through a geographic region and stimulate business sales in multiple production industries, wages and salaries, and jobs.

Both of the measures of economic value (CS and NOR), are net sums, meaning they equal the remaining portion of benefits to anglers and revenues to for-hire vessels after expenditures have been deducted. As described in the assessment, the expected change in economic value is the appropriate measure for the calculation of the costs and benefits to the nation of a proposed management change.

Estimates of changes in economic activity, though not an appropriate measure of economic value, were provided because they may be useful in characterizing potential community and shoreside effects of proposed management actions. Unlike economic value, however, measures of economic activity are not net sums. For example, in the case of business sales, total gross expenditures for an initial purchase of goods or services, as well as any expenditures that were necessary to produce those goods or services and that occurred within the same geographic area, are included in the measure of business activity. It should be clearly understood, therefore, that economic value and economic activity are not equivalent and it is incorrect to equate the two. This comment confuses the two measures and errs in characterizing the "$23 billion" as "economic value" when it should correctly have been labeled "economic activity." As a result, comparisons of this total with others that may represent economic value, in the case of the "$118 million" figure, or that are measures of economic value, in the case of CS and NOR, are inappropriate and misleading.

Beyond the issue of comparing disjointed concepts, the primary issue associated with this comment is the difference in magnitude of the estimated effects of the proposed action when

dealing with the common metric "economic activity." Although details of the methodology utilized to produce the estimates provided in this comment were not given, the primary difference between the estimated effects provided in the assessment and those provided in this comment is likely the assumption of the number of trips that would be expected to be affected. Calculating this number is a key factor in the effects analysis.

Based on the documented model employed in NMFS' assessment, one full-time equivalent (FTE) job was estimated to be lost for every 1,800 angler trips cancelled in response to the proposed action. As described in the assessment, approximately 315,000 individual angler fishing trips could be cancelled due to this rule. These cancellations would result in the loss of 176 FTE jobs throughout the Gulf region, with 174 of these jobs occurring in Florida. These estimates do not include the effects of trip cancellations in the headboat sector because business activity estimates for this sector are not available. However, this estimate of potentially cancelled trips is considered an upper bound for cancellation in the shore, private, and charter sectors because it assumes all trips that normally would be expected to target gag during the affected period would be cancelled. In reality, many of these trips would be expected to continue and target alternative species or be shifted to the open season. As a result, the over-estimation of the number of affected trips in these other recreational sectors is expected to be sufficient to compensate for the absence of information on the headboat sector. Applying the same ratio of affected trips to jobs to the jobs estimate provided in this comment (5,000 jobs lost in Florida) results in an estimate of approximately 9 million cancelled fishing trips. Available data do not support this estimate. The average number of trips that target gag each year throughout the Gulf of Mexico is estimated to be less than 600,000 trips, while the average number of trips that catch gag is estimated to be less than 1.2 million. The total number of trips for all species in west Florida averages less than 17 million trips per year. As a result, there is no foundation to expect that more than 50 percent of all fishing trips in west Florida would be cancelled as a result of an approximate 10-month prohibition on the recreational harvest of gag.

**Non-Substantive Change From the Proposed Rule**

This final rule contains a change in the codified text from the proposed rule. In the proposed rule, § 622.34 would be amended by removing and reserving paragraph (v), and adding paragraph (w). However, because this final rule will become effective on June 1, 2011, after the current interim rule that added paragraph (v) expires, NMFS no longer needs to add paragraph (w), and can add paragraph (v) back into the codified text instead.

**Classification**

The NMFS Assistant Administrator (AA) has determined that this temporary rule is necessary for the conservation and management of the Gulf gag resource. The AA has also determined that this final temporary rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. The rule may be extended for a period of not more than 186 days, as described in section 305(c)(3)(B) of the Magnuson-Stevens Act.

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

NMFS prepared a final regulatory flexibility analysis (FRFA) for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of the full IRFA is available from NMFS (see **ADDRESSES**). The FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final temporary rule. No duplicative, overlapping, or conflicting Federal rules have been identified. This final temporary rule does not establish any new reporting, record-keeping, or other compliance requirements.

A statement of the need for and objectives of this final temporary rule is provided in the supplementary information section of this preamble and is not repeated here.

A summary of the comments received on the proposed temporary rule is provided in the previous section of this preamble. Although NMFS received no comments to the IRFA, some of the comments noted concerns about the effects this rule would have on small businesses. For example, several commenters expressed concern over the magnitude of the economic effects on the recreational sector and associated shore-side businesses expected to occur as a result of this temporary rule. One commenter claimed the economic assessment in the proposed temporary rule grossly and inadequately understated the economic effects that would result from the proposed temporary rule and provided alternative estimates of these effects.

NMFS responded to these comments in detail in the response to comments section of the preamble to this rule. Moreover, in the IRFA, NMFS analyzed the expected economic effects of the proposed action to the recreational sector components of anglers, for-hire businesses, and associated shore-side businesses. The effects of this temporary rule on anglers and shore-side businesses are not germane to the Regulatory Flexibility Act (RFA) analysis because anglers are not small entities within the context of the RFA (see discussion below) and shore-side entities would only be indirectly affected by the proposed action and the RFA does not require NMFS to examine indirect effects. NMFS agrees with the commenters that this rule will result in some economic effects on small (and large) entities. However, as discussed in greater detail below, there are no alternatives that would end overfishing of gag, as is required by the Magnuson-Stevens Act.

With respect to the criticism that NMFS understates the economic effects of this rule, as discussed in the previous section of this preamble, these alternative estimates are undocumented and unsupported by available data. NMFS' earlier response to this criticism is sufficient and is not repeated here.

This temporary final rule is expected to directly affect commercial harvesting and for-hire operations. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

This temporary final rule is expected to directly affect commercial fishing vessels whose owners possess gag quota shares and for-hire fishing vessels that harvest gag. As of October 1, 2009, 970 entities owned a valid commercial Gulf reef fish permit and were eligible for initial shares and allocation in the

grouper and tilefish IFQ program. Of these 970 entities, 908 received shares and allocation of grouper or tilefish, including 875 that received gag shares and an initial allocation of the commercial gag quota in 2010. These 875 entities are expected to be directly affected by this temporary final rule.

Of the 875 entities that initially received gag shares, 215 did not record commercial landings or revenues in 2008 or 2009. On average, these 215 entities received an initial allocation of 874 lb (397 kg) of gag in 2010. Eight of these 215 entities also received a bottom longline endorsement in 2010. These eight entities received a much higher initial allocation of gag in 2010 than all 215 entities, with an average of 3,139 lb (1,427 kg).

The other 660 entities that initially received gag shares and allocations in 2010 were active in commercial fisheries in 2008 or 2009. The maximum annual commercial fishing revenue in 2008 or 2009 by an individual vessel with commercial gag quota shares was approximately $606,000 (2008 dollars).

The average charter vessel is estimated to earn approximately $88,000 (2008 dollars) in annual revenue, while the average headboat is estimated to earn approximately $461,000 (2008 dollars).

Based on the average revenue values provided above, all commercial and for-hire fishing vessels expected to be directly affected by this temporary final rule are determined, for the purpose of this analysis, to be small business entities.

Of the 660 commercial fishing vessels with commercial landings in 2008 or 2009, 139 vessels did not have any gag landings in 2008 or 2009. The average annual gross revenue by these vessels in 2008 and 2009 was approximately $50,800 (2008 dollars). The vast majority of these vessels' commercial fishing revenue came from snapper, mackerel, dolphin, and wahoo landings. On average, these vessels received an initial allocation of 540 lb (245 kg) of gag quota in 2010.

The remaining 521 commercially active fishing vessels that initially received gag shares recorded landings of gag in 2008 or 2009. Over that 2-year period, these vessels averaged approximately $71,000 (2008 dollars) in annual gross revenue from commercial fishing. On average, these vessels had 2,375 lb (1,080 kg) and 1,300 lb (591 kg) of gag landings in 2008 and 2009, respectively, or 1,835 lb (834 kg) between the 2 years. Gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue and, thus, these vessels were somewhat, though not significantly, dependent on revenue from gag landings. The average initial gag allocation in 2010 for these 521 vessels was 2,121 lb (964 kg). Therefore, on average, the 2008 gag landings for these vessels were very near their 2010 gag allocation, but their 2009 gag landings were considerably less than their 2010 allocation.

Of these 521 vessels, 52 vessels also received a bottom longline endorsement in 2010. The average annual revenue for these 52 vessels was approximately $156,000 (2008 dollars) in 2008 and 2009. Revenue from gag landings for these vessels decreased from approximately $15,900 in 2008 to approximately $8,400 in 2009 and, thus, these vessels became relatively less dependent on gag landings in 2009. These vessels, however, were highly dependent on revenue from red grouper landings, which accounted for 54 percent and 47 percent of their gross revenue in 2008 and 2009, respectively. Revenue from deep-water grouper (DWG) landings by these vessels decreased only slightly, from approximately $36,000 in 2008 to approximately $31,000 in 2009 and, thus, these vessels became relatively more dependent on revenue from DWG landings. The average initial 2010 allocation of gag for these vessels was approximately 5,507 lb (2,503 kg), while their average gag landings were 3,933 lb (1,788 kg) and 2,204 lb (1,002 kg) in 2008 and 2009, respectively. Thus, vessels that have a bottom longline endorsement have been harvesting well below their allocation in recent years, particularly in 2009.

The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The harvest of gag in the EEZ by for-hire vessels requires a charter vessel/headboat permit for Gulf reef fish. On March 23, 2010, there were 1,376 valid or renewable for-hire Gulf reef fish permits. A valid permit is a non-expired permit. Expired reef fish for-hire permits may not be actively fished, but are renewable for up to 1 year after expiration. Because of the extended permit renewal period, numerous permits may be expired but still renewable at any given time of the year. The majority (823, or approximately 60 percent) of the 1,376 valid or renewable permits were registered with Florida addresses. The registration address for the Federal permit does not restrict operation to Federal waters off that state; however, vessels would be subject to any applicable state permitting requirements. Although the permit does not distinguish between headboats and charter vessels, NMFS estimates that 79 headboats operate in the Gulf. The majority of these vessels (43, or approximately 54 percent) operate from Florida ports. Because nearly 99 percent of gag target effort and 97 percent of the economic impacts from recreational gag fishing in the Gulf occur in west Florida, NMFS assumed that the 823 for-hire vessels (780 charter vessels and 43 headboats) with permit registration addresses in Florida will be directly affected by this action.

The 215 entities with gag shares that did not participate in commercial fishing in 2008 or 2009 have no commercial fishing revenue and did not earn any profit from commercial fishing in those 2 years. The reduction in this rule of the commercial gag quota from 1.49 million lb (0.68 million kg) to 430,000 lb (195,045 kg) will reduce these vessels' average allocation of gag in 2011 from 952 lb (433 kg) to 275 lb (125 kg), or by approximately 677 lb (308 kg). Using the average 2008 gag price of $3.52 per pound, this loss in allocation could potentially represent a loss of nearly $2,400 (2008 dollars) in gross revenue per entity. Using the 2010 average price of $1.00 per pound of gag allocation, this loss in allocation could potentially represent a loss of $670 (2008 dollars) in net revenue per entity. For the eight entities within this group that also possess longline endorsements, their average allocation of gag in 2011 will be reduced from 3,418 lb (1,554 kg) to 987 lb (449 kg), or by 2,431 lb (1,105 kg). Thus, the potential loss in gross revenue and net revenue to these eight entities is estimated to be approximately $8,600 and $2,500 (2008 dollars), respectively.

However, in general, these potential losses in gross revenue and net revenue will only be realized if these 215 entities not only become active in commercial fishing, but also intend to harvest gag in 2011 at a level above their reduced allocation. That is, because they have not used their quota (and thus gained revenue to lose) in recent years, a reduction in allocation can only lead to a reduction in landings and, thus, gross revenue, if these entities intend to harvest at levels above their reduced allocation. Alternatively, these losses in gross and net revenue could accrue to a loss of ability by these entities to sell the allocations they will lose under the temporary action, though this possibility presumes that a demand for these allocations will exist. Regardless, the significance of these potential losses in gross and net revenue to these 215 entities cannot be evaluated because of

the lack of information on potential gross revenue, net revenue, and profits from commercial fishing in general and specifically for gag.

Similarly, the 139 entities with gag shares that participated in commercial fisheries other than gag earned approximately $50,800 in annual gross revenue on average in 2008 and 2009. Profit estimates for these vessels are not currently available. However, because these entities did not have any gag landings in 2008 or 2009, none of their gross revenue or profit was the result of gag harvests. Under the temporary rule, the average allocation of gag in 2011 for these entities will be reduced from 588 lb (267 kg) to 170 lb (77 kg), or by 418 lb (190 kg). Using the average 2008 price of $3.52 per pound, this loss in allocation could potentially represent a loss of nearly $1,500 (2008 dollars) in gross revenue per entity. Using the 2010 average price of $1.00 per pound of gag allocation, this loss in allocation could potentially represent a loss of approximately $410 (2008 dollars) in net revenue per entity.

However, these potential losses in gross and net revenue will only lead to a loss in profits if these 139 entities intend to commercially harvest gag in 2011 at a level above their reduced allocation. That is, a reduction in allocation can only lead to a reduction in landings if these entities intend to harvest at levels above their reduced allocation. For example, if these vessels intended to harvest gag in 2011 at a level equivalent to their 2011 allocation, and this harvest was in addition to, rather than in place of, their recent commercial fishing activities, the reduction in allocation could lead to a maximum loss of approximately 3 percent in gross revenue, which could in turn reduce net revenue and profits. Alternatively, losses in gross and net revenue could be due to a potential inability to sell the allocations lost under the temporary final rule, though this possibility presumes that a demand for these allocations will exist.

The 521 entities with gag shares that commercially harvested gag in 2008 or 2009 earned an average gross revenue of approximately $71,000 (2008 dollars) per year. Profit estimates for these vessels are not currently available. However, gag landings accounted for approximately 8 percent of these vessels' average annual gross revenue. As a result, these vessels are somewhat, but not significantly, dependent on revenue from gag landings. Under the temporary final rule, the gag allocations for these vessels will be reduced from 2,310 lb (1,050 kg) to 667 lb (303 kg), or 1,643 lb (747 kg) on average. Because these vessels have been harvesting at levels near their 2010 allocation in recent years, on average, this reduction in gag allocation is likely to lead to an equivalent reduction in gag landings and, therefore, gross revenue. Using the average 2008 price of $3.52 per pound, it is estimated that these vessels could lose nearly $5,800 (2008 dollars), or approximately 8 percent, in annual gross revenue, on average. Using the 2010 average price of $1.00 per pound of gag allocation, these vessels could lose approximately $1,600 (2008 dollars) in net revenue, which is assumed to be representative of profit for commercial vessels, per entity under this temporary final rule.

However, 52 of these 521 vessels also received a bottom longline endorsement in 2010. The average annual gross revenue for these 52 vessels was approximately $156,000 (2008 dollars) in 2008 and 2009, with gag landings accounting for approximately 8 percent of gross revenue. These vessels are more dependent on revenue from red grouper than from gag. Under this action, the allocation of gag in 2011 for these vessels will decrease from 6,215 lb (2,825 kg) to 1,953 lb (888 kg), or by 4,262 lb (1,937 kg). Because these vessels have been harvesting gag at levels near their 2010 allocation on average in recent years, the reduction in gag allocation is expected to lead to an equivalent reduction in gag landings and gross revenue. Using the average 2008 price of $3.52 per pound, it is estimated that these vessels would lose approximately $15,000 (2008 dollars) in annual gross revenue, or nearly 10 percent, on average. Using the 2010 average price of $1.00 per pound of gag allocation, these vessels would lose approximately $4,200 (2008 dollars) in net revenue, which is assumed to be representative of profit, per entity.

No additional economic effects are expected to result from the revised SWG quota because this quota simply reflects the reduction in the commercial gag quota, the effects of which have already been discussed.

Minimal adverse economic effects are expected to result from the action to suspend the conversion of red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag. Multi-use allocation that has been converted from red grouper allocation can only be used to possess, land, or sell gag after an entity's gag and gag multi-use allocation has been landed, sold, or transferred. As a result of the reduction in the commercial gag quota that will occur under this temporary final rule, it is expected that vessels will exhaust their gag and gag multi-use allocations relatively quickly. Gag commands a higher market price. As a result, gross revenue from commercial fishing revenue and profit per vessel could be reduced as a result of the suspension of multi-use conversion.

NOR is assumed to be representative of profit for for-hire vessels. As previously discussed, it is assumed that 823 for-hire vessels, of which 780 are estimated to be charter vessels and 43 headboats, participate in the gag component of the recreational sector of the Gulf reef fish fishery. Estimates of NOR from recreational fishing for all species by these charter vessels and headboats are not available. However, on average, the NOR per year for vessels from trips targeting gag is estimated to be approximately $1.56 million for all charter vessels (approximately $2,000 per vessel) and approximately $91,300 for all headboats (approximately $2,100 per vessel), or approximately $1.65 million per year for all for-hire vessels.

During the periods when the recreational harvest of gag is prohibited, some trips that normally would be expected to target gag are expected to target other species, while other trips are expected to be cancelled. Estimates of NOR per trip by species targeted, however, are unavailable. Assuming the NOR per trip is constant regardless of the species targeted, for-hire operators will only lose NOR from cancelled trips and not trips directed towards alternative species. Estimates of the actual number of trips that would be expected to be cancelled as a result of the shortened gag season are not available. The following analysis assumes all for-hire trips that would normally be expected to target gag will be cancelled when the recreational sector is closed. Because not all of these trips are likely be cancelled, this analysis overestimates the actual reduction in NOR associated with a shorter season that is expected to occur and the following estimates of losses in NOR and profit for charter vessels and headboats should be considered maximum values.

The establishment of a recreational gag fishing season of September 16, 2011–November 15, 2011, is expected to result in a maximum reduction of NOR of approximately $435,000 and $28,000 from trips targeting gag on charter vessels and headboats, respectively, or approximately $463,000 across both fleets. These reductions translate into per-vessel averages of approximately $560 and $660 for charter vessels and headboats, respectively, or approximately 28 percent and 31 percent of profits. If this temporary final

rule is extended an additional 186 days, as allowed under the Magnuson-Stevens Act for interim or emergency measures, the reductions in NOR for charter vessels and headboats are estimated to be, in total over the entire period (366 days), approximately $1.41 million and $81,800, respectively, or $1,808 and $1,902 per charter vessel and headboat.

This temporary rule is not expected to affect the profit from charter vessel or headboat trips that do not target gag. For-hire vessel dependence on fishing for individual species cannot be determined with available data. Although some for-hire vessels are likely more dependent on trips that target gag than other for-hire vessels, overall, only approximately 3 percent of for-hire anglers are estimated to target gag. As a result, while shortening the gag season action is expected to substantially affect the NOR derived from gag trips, overall, gag trips do not comprise a substantial portion of total for-hire trips, nor are these trips, by extension, expected to account for a substantial portion of total fleet-wide for-hire NOR.

Two alternatives, including the status quo, were considered to setting the gag commercial quota at 430,000 lb (195,045 kg). The first alternative, the status quo, would have maintained the gag commercial quota at 1.49 million lb (0.68 million kg). This alternative is not consistent with the goals and objectives of the Council's plan to manage gag to achieve the mandates of the Magnuson-Stevens Act. Specifically, selection of this alternative would be inconsistent with current National Standard 1 guidance because the commercial quota would be above the commercial annual catch target (ACT) of 500,000 lb (226,796 kg), which is based on the Council's defined $F_{OY}$ (fishing mortality at the optimum yield) yield of 1.28 million lb (0.58 million kg) for 2011. In addition, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would have set the gag commercial quota at 100,000 lb (45,539 kg). This alternative is based on the request made by the Council in August 2010 for the interim rule that published December 1, 2010, and reflects the uncertainty in the stock status at that time due to questions regarding how commercial and recreational discards were treated in the assessment update. When this commercial quota was recommended, it was unknown how revisions to the treatment of discards might influence the reanalysis of the updated stock assessment. If the reanalysis yielded a more pessimistic condition of the stock, then setting the harvest based on the $F_{OY}$ yield, estimated then at 390,000 lb (177,273 kg), would not reduce overfishing sufficiently to allow the stock to begin to recover within the maximum time frame allowed under the Magnuson-Stevens Act. The 100,000 lb (45.539 kg) commercial quota was recommended because some gag are expected to be incidentally caught by the commercial sector while fishing for other species. Further, most discarded gag die after being released due to the high discard mortality rate associated with fishing at deeper depths. Rather than waste all of these fish, the Council set the quota at a level that would allow some fish to be retained and be counted towards the commercial quota.

As of March 2, 2011, over 65 percent of the gag IFQ shareholders had less than 50 lb (23 kg) in allocation still available to them. Thus, if the commercial quota were not set at a level above 100,000 lb (45,539 kg), gag would likely be lost through dead discards rather than kept and counted towards the commercial quota as fishermen run out of allocation. However, the reanalysis of the assessment showed a slight increase in the projected yields under the $F_{OY}$ if Florida adopted compatible regulations for the recreational sector. Because Florida adopted compatible regulations for the recreational sector, a higher commercial quota is allowable.

One alternative, the status quo, was considered to suspending vessels' ability to convert red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag. This alternative would have continued to allow 4 percent of the red grouper allocation to be converted into multi-use allocation, and would be expected to result in gag harvests exceeding the annual catch limit, promote overfishing, and slow recovery of the stock, contrary to the Council's objectives. Further, this alternative would also be expected to result in greater adverse economic effects stemming from the corrective measures that would be implemented to address the over-harvesting of gag.

Three alternatives, including the status quo, were considered to establishing a recreational fishing season for gag of September 16, 2011, through November 15, 2011. The first alternative, the status quo, would maintain the recreational ACT at 2.20 million lb (1 million kg), and anglers would be able to harvest the 2-fish daily bag limit for gag starting June 1, 2011. Depending on whether 2006–08 or 2009 is used as the baseline, the estimated reduction in removals under this alternative would be between 15 percent and 20 percent, which is insufficient to allow the stock to rebuild, and would be inconsistent with the stock rebuilding plan being developed by the Council. In addition, this alternative is inconsistent with the Magnuson-Stevens Act and current National Standard 1 guidance because the expected level of harvest would be above the recreational ACT of 780,000 lb (353,802 kg), which is based on the Council's defined $F_{OY}$ yield of 1.28 million lb (0.58 million kg) for 2011. Further, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would set the gag bag limit to zero and, thereby, prohibit the recreational harvest of gag. This alternative would reduce fishing mortality the most out of all the alternatives considered and, therefore, generate the greatest biological benefits for the gag stock. Although this alternative would not allow the recreational harvest of gag while the interim rule is in effect, the number of dead discards would also be expected to be reduced because no recreational fishing trips would be expected to target gag. Because Florida adopted compatible regulations, this alternative would reduce the harvest sufficiently in 2011 to be consistent with the Council's rebuilding plan in Amendment 30B to the FMP, as it would reduce removals between 58 percent and 67 percent and, as such, end overfishing. If Florida had not adopted compatible regulations, the estimated reduction in removals would be between 43 percent and 61 percent, which would reduce, but might not be sufficient to end, overfishing. Because no recreational harvest of gag would be allowed, this alternative would be expected to result in greater economic losses to the for-hire sector than this temporary rule. However, when the Council requested the current temporary rule, it intended to allow some recreational harvest of gag in 2011 and establish that level of harvest under the long-term management measures being developed in Amendment 32 to the FMP. This alternative would not accomplish that goal, and so was not selected.

The third alternative would establish a recreational fishing season for gag of July 1, 2011, through August 15, 2011, and, thus, would allow for some recreational harvest of gag in 2011 as the Council intended when it requested the current interim rule. This alternative would establish a 46-day recreational fishing season, which is less than the 61-day season under this temporary rule. This alternative also minimally overlaps with the red snapper season, which begins on June 1. This alternative

would provide for-hire vessels with a greater number of options when marketing summer trips. The reduction in removals under this alternative would be expected to be between 49 percent and 60 percent and, therefore, might be sufficient to end overfishing.

The Council heard public testimony regarding potential recreational seasons for gag at its February 2011 meeting. Participants in the recreational sector asked for either a summer or winter season depending on their geographic location. In general, recreational participants from Texas, southwest Florida, and central Florida favored a winter season, while recreational participants from other areas of the Gulf favored a summer season. In looking for a compromise, the Council recommended the proposed recreational season with no changes to the bag limit or size limit. The proposed recreational season would cover the end of the summer recreational fishing season and run through the beginning of the winter recreational fishing season. In addition, the estimated reductions in removals under the proposed recreational season are between 50 percent and 54 percent, which might be sufficient to end overfishing.

Pursuant to 5 U.S.C. 553(d)(3), NMFS finds that delaying this rule's effective date for 30 days is impracticable and contrary to the public interest, and therefore there is good cause to waive the 30-day delay in effectiveness of this rule.

A delay is impracticable, because it would contribute to overfishing of gag, which is contrary to National Standard 1 of the Magnuson-Stevens Act, which requires NMFS to conserve and manage ocean resources to prevent overfishing while achieving the optimum yield from each fishery. Without this rule, on June 1, 2011 the current gag temporary rule will expire, which would allow the commercial sector to harvest gag using red grouper multi-use allocation and the recreational sector to harvest gag in Federal waters. These harvests could result in further overfishing of gag, contrary to NMFS' statutory obligations. By implementing this rule immediately, red grouper multi-use allocation will be suspended and the recreational sector for gag will be closed to gag harvest until the 2-month gag season, which opens on September 16 and closes on November 15, 2011.

In addition, delaying the effectiveness of this rule for 30-days is contrary to the public interest. This rule replaces the current fishing season for gag with a 2-month recreational fishing season for gag in the fall. Recreational fishing businesses need to be able to plan for this season, and any delay in implementing this rule will delay their ability to plan for this new season, and risk economically injuring these entities. Moreover, many Gulf reef fish fishermen have already exhausted their gag allocation for the year, and this temporary rule will allow them to catch more gag. Without the increased allocation of gag, gag bycatch in the commercial sector would increase, leading in turn to a higher gag mortality rate, and a further reduction of the gag resource, which would be contrary to the public's interest.

Accordingly, the 30-day delay in effectiveness of the measures contained in this temporary rule is waived.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 27, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

### § 622.20 [Amended]

■ 2. In § 622.20, paragraph (b)(2)(iv)(A) is suspended.

■ 3. In § 622.34, paragraph (v) is added to read as follows:

### § 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(v) *Seasonal closure of the recreational sector for gag.* The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through September 15 and November 16 through December 31 each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

■ 4. In § 622.42, paragraphs (a)(1)(iii)(A)(*3*) and (a)(1)(iii)(B)(*3*) are suspended and paragraphs (a)(1)(iii)(A)(*4*) and (a)(1)(iii)(B)(*4*) are added to read as follows:

### § 622.42 Quotas.

(a) * * *

(1) * * *

(iii) * * *

(A) * * *

(*4*) For fishing year 2011 and subsequent fishing years—5.16 million lb (2.34 million kg).

(B) * * *

(*4*) For fishing year 2011 and subsequent fishing years—430,000 lb (195,045 kg).

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[FR Doc. 2011–13703 Filed 5–27–11; 4:15 pm]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 101203602–0602–1]**

**RIN 0648–BA29**

## Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Retention Standard; Emergency Rule Extension

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

**ACTION:** Temporary rule; emergency action extension.

**SUMMARY:** NMFS is exempting, through this emergency rule extension, trawl catcher/processor vessels (C/Ps) that are not specified in regulation as American Fisheries Act (AFA) vessels, and Amendment 80 cooperatives from the groundfish retention standard (GRS) program in the Bering Sea and Aleutian Islands management area. The GRS was implemented to increase the retention and utilization of groundfish caught by the non-AFA trawl C/Ps and to respond to bycatch reduction goals described in National Standard 9. NMFS recently discovered that the regulatory methodology used to calculate compliance with and to enforce the GRS percentages established for 2010 and 2011 effectively require the sector to meet a GRS well above that considered by the North Pacific Fishery Management Council or that implemented by NMFS. As a result, the retention requirements are expected to impose significantly higher costs due to the increased level of retention and to generate an unanticipated level of noncompliance in the Amendment 80 fleet. Further, monitoring and enforcement of the GRS have proven far more complex, challenging, and potentially costly than anticipated by NMFS. This emergency rule extension is necessary to exempt non-AFA trawl C/Ps and Amendment 80 cooperatives from the minimum retention

requirements of the GRS program for the remainder of the 2011 fishing season. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable law.

**DATES:** Effective from June 13, 2011, through December 17, 2011.

**ADDRESSES:** Electronic copies of the Regulatory Impact Review (RIR) and the Categorical Exclusion prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.* The Environmental Assessment, RIR, and Final Regulatory Flexibility Analysis for Amendment 79 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and the Environmental Assessment, RIR, and Final Regulatory Flexibility Analysis for Amendment 80 to the FMP are available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Seanbob Kelly, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides authority for rulemaking to address an emergency. Under that section, a Regional Fishery Management Council may recommend emergency rulemaking, if it finds an emergency exists. At its June 2010 meeting, the North Pacific Fishery Management Council (Council) voted 10 to 1 to request that NMFS promulgate an emergency rule to exempt non-AFA trawl C/Ps and Amendment 80 cooperatives from the 2010 and 2011 GRS in the Bering Sea and Aleutian Islands management area (BSAI).

On December 15, 2010, NMFS published an emergency action to exempt the non-AFA trawl C/Ps and Amendment 80 cooperatives from regulations implementing the GRS program at 50 CFR 679.27(j)(1) through (4), through June 13, 2011 (75 FR 78172). NMFS invited public comments until January 14, 2011. NMFS received four public comments from two unique persons during the public comment period for the emergency rule exempting non-AFA trawl C/Ps and Amendment 80 cooperatives from the minimum GRS established under Amendment 79. The comments are summarized and responded to below; however, this emergency rule extension makes no changes to the exemptions contained in the initial emergency action.

This extension of the emergency rule exempting non-AFA trawl C/Ps and Amendment 80 cooperatives from regulations establishing the GRS minimum retention standards continues to remove all regulatory incentive for the Amendment 80 sector to meet or exceed retention standards for 2011. However, non-AFA trawl C/Ps and Amendment 80 cooperatives are still required to meet all applicable record keeping, monitoring, and permitting regulations, including but not limited to 50 CFR 679.93(c) and 679.7(g), which ensure proper catch accounting under the Amendment 80 quota-based catch share management program. The preamble to the emergency rule (75 FR 78172, December 15, 2010) provides additional background information.

Section 305(c)(3)(B) of the Magnuson-Stevens Act authorizes NMFS to extend the emergency action for up to 186 days beyond the June 13, 2011, expiration of the initial emergency action, provided the public has had an opportunity to comment on the emergency action and, in the case of a Council recommendation, the Council has recommended NMFS implement a regulatory amendment to address the emergency on a permanent basis.

The initial emergency rule exempted vessels from a portion of the 2011 fishing year and thereby precluded the calculation of compliance with the annual GRS; however, an extension is necessary to relieve these vessels from the requirement to retain groundfish at 85 percent or higher for 2011. This extension is necessary because any lapse in an exemption from the minimum retention regulations would require all non-AFA trawl C/Ps and Amendment 80 cooperatives to retain groundfish at the 85 percent minimum retention standard for 2011. With this emergency rule extension, owners and operators of vessels in the non-AFA trawl C/Ps and Amendment 80 cooperatives are exempt from 679.27(j)(1) through (4) through December 17, 2011.

At its February 2011 meeting, the Council recommended a preferred alternative to permanently address the emergency that would remove the GRS program and instead require annual reporting of retention rates. The emergency rule extension would provide relief for the non-AFA trawl C/Ps and Amendment 80 cooperatives in 2011 while the Council and NMFS prepare regulatory amendment documents for review by the Secretary of Commerce.

**Public Comment**

NMFS received four comments from two unique persons on the emergency rule exempting non-AFA trawl C/Ps and Amendment 80 cooperatives from the GRS for 2010 and 2011. Both commenters generally support NMFS emergency action. The comments are summarized and responded to as follows:

*Comment 1:* Both commenters support NMFS' emergency action and encourage NMFS to extend the emergency rule while an alternative program is developed by the Council. These letters described the economic burden of the GRS on the industry and they noted the inability to fully monitor and enforce the minimum standards as justification to extend the emergency rule.

*Response:* NMFS notes the support for emergency action and its extension. This rule may be extended for a period of not more than 186 days as described under section 305(c)(3)(B) of the Magnuson-Stevens Act; therefore, this emergency action would not exempt vessels from the GRS in the 2012 fishing year. At its February 2011 meeting, the Council took final action on a regulatory amendment to remove provisions of the GRS program and instead establish new reporting requirements for the non-AFA trawl C/Ps and Amendment 80 cooperatives. Based on experience with similar actions, NMFS expects this regulatory amendment to be effective by the start of the 2012 fishing year.

*Comment 2:* NMFS should have included the various monitoring requirements at § 679.27(j)(5) through (7) in the emergency rule exempting § 679.27(j)(1) through (j)(4). Several of these regulations could impose unnecessary and unneeded burden on the fleet. NMFS should correct these oversights by extending the emergency exemption to include all of § 679.27(j).

*Response:* NMFS disagrees. The Council recommended and NMFS concurred with taking emergency action to exempt non-AFA trawl C/Ps and Amendment 80 cooperatives from the minimum retention requirements. Emergency action was necessary because (1) the regulatory methodology used to calculate compliance with the annual GRS differs from the methodology the Council used to set the minimum retention standard and (2) the high enforcement and prosecution costs associated with the GRS.

To meet the objectives of this action, NMFS exempted non-AFA trawl C/Ps and Amendment 80 cooperatives from the GRS compliance calculations and the minimum retention schedule found

at § 679.27(j)(1) through (4). NMFS did not include the remaining paragraphs in this section because these regulations directly regulate the monitoring, recordkeeping, offloading, and reception of catch from other vessels and do not directly relate to the establishment of or calculations associated with the minimum retention standards under the GRS program. Removing these monitoring and enforcement requirements may affect the non-AFA trawl C/Ps and Amendment 80 cooperatives in ways not considered or intended by the Council at the time they recommended the emergency action.

*Comment 3:* The monitoring requirements at § 679.27(j)(5) were ordered vacated by the U.S. Court of Appeals for the District of Columbia Circuit in December 18, 2007. Please clarify whether these regulation are still effective.

*Response:* On December 18, 2007, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision invalidating three monitoring and enforcement requirements associated with the Bering Sea and Aleutian Islands Groundfish Retention Standard Program that would have been effective on January 20, 2008 (No. 06cv00835; *Fishing Company of Alaska, Inc.,* v. *Gutierrez, et al.*). In accordance with the court's ruling, NMFS issued information bulletins (08–4) and (08–7), which announced that the regulation at 50 CFR 679.7(m)(5) is invalid and void, and would not be enforced by NMFS. NMFS also announced that the phrase, "at a single location" contained in the first sentence of 50 CFR 679.27(j)(5)(ii), and that the last sentence of 50 CFR 679.27(j)(5)(iii) are invalid and void, and will not be enforced by NMFS. Other regulations pertaining to the BSAI GRS were unaffected by the court's decision and have been in effect since January 20, 2008.

Although the regulatory text at § 679.27(j)(5)(i) through (iii) has not been modified to reflect the specific portions vacated by the U.S. Court of Appeals, NMFS notified Amendment 80 vessel owners and operators of the scope of the court's ruling in a letter dated January 7, 2008. NMFS clarifies that the remaining text of § 679.27(j)(5) remains applicable to the non-AFA trawl C/Ps and Amendment 80 cooperatives. For the purposes of complying with the regulatory change, vessel owners are advised to see the actual text in the Code of Federal Regulations at *http://www.gpoaccess.gov/cfr/index.html.*

*Comment 4:* Regulations at § 679.27(j)(5) through (7) are redundant with regulations established for monitoring Amendment 80 program and are not effective. One commenter also suggested removing § 679.27(j)(7) from regulations in any proposed action to remove the GRS program.

*Response:* NMFS acknowledges that many objectives for establishing monitoring and enforcement regulations under Amendment 80 were similar to those under Amendment 79; however, regulations at § 679.27(j)(5) through (7) were not intended to be affected by this action; see response to Comment 2 of this preamble.

Furthermore, NMFS disagrees that the regulations implementing Amendment 80 are redundant with those at § 679.27(j)(5) through (7). The regulations implementing Amendment 80 established a rights-based quota management program that expanded the GRS program to include all non-AFA trawl C/Ps regardless of size and Amendment 80 cooperatives. The Council recommended and NMFS implemented enhanced monitoring and enforcement regulations because of the increased incentive for the non-AFA trawl C/Ps and Amendment 80 cooperatives to engage in presorting or "high grading" of catch prior to weighing under the quota-based catch share management plan. Although the regulations implementing Amendment 80 did not remove any of the monitoring and enforcement regulations established under the GRS program, the regulations implementing Amendment 80 provided additional measures to sufficiently minimize the under-reporting or misreporting of catch under that program.

## Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this emergency rule extension is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws. NMFS has the authority to extend the emergency action for up to 186 days beyond the June 13, 2011, expiration of the initial emergency action, as authorized under section 305(c)(3)(B) of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. In the initial emergency rule published on December 15, 2010 (75 FR 78172), NMFS requested public comment and received two unique letters containing four substantive public comments.

This action extends without change, the exemptions contained in the initial emergency action. If the initial emergency action were allowed to lapse, regulations at 50 CFR 679.27(j)(1) through (4) would require all non-AFA trawl C/Ps and Amendment 80 cooperatives to retain groundfish at the 85 percent minimum retention standard for 2011 and each following year. As described in the initial emergency action, exempting a vessel from a portion of the year precludes the calculation of annual compliance with the GRS. This lack of regulatory clarity could cause economic harm to fishery participants required to meet an unenforceable retention standard much higher than the Council recommended. Extending the exemptions of the emergency rule without additional notice and opportunity for public comment will ensure the 2011 groundfish fishery continues uninterrupted and will prevent unnecessary adverse economic impacts. Therefore, for the reasons outlined above, the Assistant Administrator finds it is unnecessary and contrary to the public interest to provide any additional notice and opportunity for public comment under 5 U.S.C. 553(b)(B) prior to publishing the emergency rule extension.

Because this rule relieves a restriction by exempting vessel owners and operators from the GRS minimum retention standards, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1).

This emergency rule extension has been determined to be not significant for purposes of Executive Order 12866. The regulatory impact review prepared for this action is available from NMFS (see **ADDRESSES**).

No duplication, overlap, or conflict between this action and existing Federal rules has been identified.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law.

**Authority:** 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

Dated: May 26, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2011–13719 Filed 6–1–11; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 76, No. 106
Thursday, June 2, 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.

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 2 CFR Chapter XVIII

### 5 CFR Chapter LIX

### 14 CFR Chapter V

### 48 CFR Chapter 18

**[Notice (11–051)]**

### Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Request for comments.

**SUMMARY:** As part of its implementation of Executive Order 13563, Improving Regulation and Regulatory Review, issued by the President on January 18, 2011, NASA is seeking comments on the Agency's preliminary plan to conduct a retrospective analysis of its existing regulations. The purpose of this analysis is to make NASA's regulatory program more effective and less burdensome in achieving its regulatory objectives.

**DATES:** Comments are requested on or before July 5, 2011.

**ADDRESSES:** Submit comments to *http://www.regulations.gov,* or e-mail comments to *hq-regulatory-review@mail.nasa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Nanette Jennings, 202–358–0819, *hq-regulatory-review@mail.nasa.gov.*

**SUPPLEMENTARY INFORMATION:** On January 18, 2011, the President issued Executive Order 13563, Improving Regulation and Regulatory Review, to ensure that Federal regulations seek a more affordable, less intrusive means to achieve policy goals and that agencies give careful consideration to the benefits and costs of those regulations. The Order further directs agencies to develop a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. The Order can be accessed at *http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo13563_01182011.pdf.*

To implement the Order, NASA developed its preliminary plan and issues this request seeking public comment on how best to review its existing regulations. NASA's plan is accessible on its Open Government Web site at *http://www.nasa.gov/open/.* Submit electronic comments through the Federal e-Rulemaking Portal at *http://www.regulations.gov,* or e-mail electronic comments to *hq-regulatory-review@mail.nasa.gov.* Include "Regulatory Review" in the subject line of the e-mail.

**Richard Keegan,**
*Associate Deputy Administrator.*

[FR Doc. 2011–13678 Filed 6–1–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 2 CFR Chapter XXIV

### 5 CFR Chapter LXV

### 12 CFR Chapter XVII

### 24 CFR Chapters I, II, III, IV, V, VI, VIII, IX, X, XII, and Subtitles A and B

### 48 CFR Chapter 24

**[Docket No. FR–5506–N–02]**

### Reducing Regulatory Burden; Retrospective Review Plans Under E.O. 13563

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Request for information.

**SUMMARY:** In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," HUD has developed a preliminary review plan for periodically analyzing its existing significant regulations to determine whether they should be modified, streamlined, expanded, or repealed. The preliminary plan also identifies specific regulatory actions rules that HUD will be undertaking to address regulations that the Department has identified as being outdated, ineffective, or excessively burdensome. The preliminary plans of the Federal agencies have been posted on the White House Web site at: http://www.slideshare.net/whitehouse/hud-combined. Through this notice, HUD solicits public comment on the Department's preliminary plan and list of candidate rules. The purpose of HUD's regulatory review is to make the Department's regulations more effective and less burdensome in achieving HUD's mission to create strong, sustainable, inclusive communities, and quality affordable homes for all.

**DATES:** *Comment Due Date:* Comments on HUD's preliminary regulatory review plan and list of candidate rules are due on or before: August 1, 2011.

**ADDRESSES:** Interested persons are invited to submit comments regarding HUD's preliminary regulatory review plan and list of candidate rules to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are three methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0001.

2. *E-mail Submission of Comments: Comments* may be submitted by e-mail to RegulatoryReview@hud.gov.

3. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the

*http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the three methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10282, Washington, DC 20410; telephone number 202–708–1793 (this is not a toll-free number). 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.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On January 18, 2011, President Obama issued Executive Order 13563, "Improving Regulation and Regulatory Review."[1] The Executive Order requires Federal agencies to seek more affordable, less intrusive ways to achieve policy goals and give careful consideration to the benefits and costs of those regulations. The Executive Order recognizes that these principles should not only guide the Federal government's approach to new regulations, but to existing ones as well. To that end, agencies are required to review existing significant regulations to determine if they are outmoded, ineffective, insufficient or excessively burdensome. Executive Order 13563 also required that, by May 18, 2011, each agency develop and submit to the Office of Management and Budget's Office of Information and Regulatory Affairs a preliminary plan for periodically reviewing existing significant regulations to determine whether they should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives.

On March 2, 2011, at 76 FR 11395, HUD published a notice in the **Federal Register** inviting public comments, with a comment deadline of May 2, 2011, to assist in the development of the plan required by the Executive Order and in identifying specific current regulations that should be the subject of HUD review. HUD received 42 public comments from nonprofit advocacy groups, private industry groups, housing authorities, and private individuals, amounting to more than 300 specific suggestions.

The preliminary regulatory review plans of the Federal agencies have been posted on the White House Web site at: http://www.slideshare.net/whitehouse/hud-combined. The appendix to HUD's plan identifies the initial set of HUD regulatory actions being taken in response to Executive Order 13563. HUD carefully considered the comments received in response to the March 2, 2011, notice in development of its preliminary plan.

Through this notice, HUD solicits public comment on the Department's preliminary plan and list of candidate rules. All comments will be considered in the development of HUD's final plan.

Dated: May 26, 2011.

**Camille E. Acevedo,**

*Associate General Counsel for Legislation and Regulations.*

[FR Doc. 2011–13597 Filed 6–1–11; 8:45 am]

BILLING CODE 4210–67–P

[1] The Executive Order was subsequently published in the **Federal Register** on January 21, 2011, at 76 FR 3821.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AM37**

### Prevailing Rate Systems; Redefinition of the Northern Mississippi and Memphis, TN, Appropriated Fund Federal Wage System Wage Areas

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The U.S. Office of Personnel Management is issuing a proposed rule that would redefine the geographic boundaries of the Northern Mississippi and Memphis, Tennessee, appropriated fund Federal Wage System (FWS) wage areas. The proposed rule would redefine Panola County, MS, from the Northern Mississippi wage area to the Memphis wage area. This change is based on a consensus recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC) to best match the county proposed for redefinition to a nearby FWS survey area. FPRAC did not recommend other changes for the Northern Mississippi and Memphis FWS wage areas at this time.

**DATES:** We must receive comments on or before July 5, 2011.

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

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

**SUPPLEMENTARY INFORMATION:** The U.S. Office of Personnel Management (OPM) is issuing a proposed rule to redefine the Northern Mississippi and Memphis, TN, appropriated fund Federal Wage System (FWS) wage areas. This proposed rule would redefine Panola County, MS, from the Northern Mississippi wage area to the Memphis wage area.

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Panola County is currently defined to the Northern Mississippi area of application in appendix C to subpart B of part 532. Based on our analysis of the regulatory criteria for defining appropriated fund FWS wage areas, we find that Panola County would now be more appropriately defined as part of the Memphis area of application. Distance and commuting patterns criteria for Panola County clearly favor the Memphis wage area. Transportation

facilities and geographic features criteria favor the Memphis wage area because Interstate Highway 55 provides direct access from Panola County to the Memphis survey area while access to the major cities in the Northern Mississippi survey area (Columbus, Greenwood, and Tupelo) is mainly by secondary and multilane divided highways. Similarities in overall population, total private sector employment, and kinds and sizes of private industrial establishments favor the Northern Mississippi wage area. Based on this analysis, we recommend that Panola County be redefined to the Memphis wage area.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended this change by consensus. This change would be effective on the first day of the first applicable pay period for FWS employees in Panola County beginning on or after 30 days following publication of final regulations. FPRAC did not recommend other changes in the geographic definitions of the Northern Mississippi and Memphis wage areas at this time.

**Regulatory Flexibility Act**

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

**List of Subjects in 5 CFR Part 532**

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

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

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

## PART 532—PREVAILING RATE SYSTEMS

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

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

**Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas**

2. Appendix C to subpart B is amended by revising the wage area listings for the Northern Mississippi and Memphis, TN, wage areas to read as follows:

* * * * *

**MISSISSIPPI**

* * * * *

**Northern Mississippi**

*Survey Area*

Mississippi:
- Clay
- Grenada
- Lee
- Leflore
- Lowndes
- Monroe
- Oktibbeha

*Area of Application. Survey area plus:*

Mississippi:
- Alcorn
- Bolivar
- Calhoun
- Carroll
- Chickasaw
- Choctaw
- Coahoma
- Itawamba
- Lafayette (Does not include the Holly Springs National Forest portion)
- Montgomery
- Noxubee
- Pontotoc (Does not include the Holly Springs National Forest portion)
- Prentiss
- Quitman
- Sunflower
- Tallahatchie
- Tishomingo
- Union (Does not include the Holly Springs National Forest portion)
- Washington
- Webster
- Winston
- Yalobusha

* * * * *

**TENNESSEE**

* * * * *

**Memphis**

*Survey Area*

Arkansas:
- Crittenden
- Mississippi

Mississippi:
- De Soto

Tennessee:
- Shelby
- Tipton

*Area of Application. Survey area plus:*

Arkansas:
- Craighead
- Cross
- Lee
- Poinsett
- St. Francis

Mississippi:
- Benton
- Lafayette (Holly Springs National Forest portion only)
- Marshall
- Panola
- Pontotoc (Holly Springs National Forest portion only)
- Tate
- Tippah
- Tunica
- Union (Holly Springs National Forest portion only)

Missouri:
- Dunklin
- Pemiscot

Tennessee:
- Carroll
- Chester
- Crockett
- Dyer
- Fayette
- Gibson
- Hardeman
- Hardin
- Haywood
- Lake
- Lauderdale
- Madison
- McNairy
- Obion

* * * * *

[FR Doc. 2011–13698 Filed 6–1–11; 8:45 am]

BILLING CODE 6325–39–P

## OFFICE OF PERSONNEL MANAGEMENT

## 5 CFR Chapters I and XXXV

## 45 CFR Chapter VIII

## 48 CFR Chapters 16, 17, and 21

## Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

**AGENCY:** Office of Personnel Management.

**ACTION:** Request for information.

**SUMMARY:** The Office of Personnel Management has posted on its public open government Web site a preliminary plan for retrospective review of its existing regulations. OPM prepared this plan in compliance with Executive Order 13563, Improving Regulation and Regulatory Review, issued January 18, 2011. The Executive Order outlines the President's plan to create a 21st-century regulatory system that is simpler and smarter and that protects the interests of the American people in a pragmatic and cost-effective way.

**DATES:** The deadline for submitting comments is July 1, 2011.

**ADDRESSES:** The public is encouraged to submit comments through OPM's public Web site (*http://www.opm.gov/open*).

**FOR FURTHER INFORMATION CONTACT:** Mauro Morales, Policy Counsel, Office of Personnel Management, 1900 E Street NW., Room 1342, Washington, DC

20415. Phone (202) 606–1700 or e-mail at *Mauro.Morales@opm.gov.*

**SUPPLEMENTARY INFORMATION:** OPM's plan sets forth a process for obtaining input from the public on an annual basis concerning the regulations that OPM should review. The plan also identifies the regulations that OPM plans on examining this year.

OPM is now seeking public comment on its plan. Any comments that are submitted will also be viewable by the public. OPM will review the comments and post the final plan to its public open government Web site.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2011–13699 Filed 6–1–11; 8:45 am]

**BILLING CODE 6325–48–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 36

**[Document No. AMS–FV–07–0100]**

### Procedures by Which the Agricultural Marketing Service Develops, Revises, Suspends, or Terminates Voluntary Official Grade Standards: United States Standards for Grades of Frozen Okra

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Request for comments.

**SUMMARY:** The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) proposes to revise the United States Standards for Grades of Frozen Okra. The standards for frozen okra would be changed from a "variable score point" system to an "individual attribute" grading system; the "dual grade nomenclature" would be replaced with single letter grade designation and editorial changes would be included. These changes would bring the standards for frozen okra in line with the present quality levels being marketed today and would provide guidance in the effective utilization of frozen okra.

**DATES:** Comments must be submitted on or before August 1, 2011.

**ADDRESSES:** Written comments may be mailed to Brian E. Griffin, Inspection and Standardization Section, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 0709, South Building; STOP 0247, Washington, DC 20250; fax: (202) 690–1527; or Internet: *http://www.regulations.gov.* The proposed United States Standards for Grades of Frozen Okra are available through the address cited above. All comments should reference the document number, date, and page number of this issue of the **Federal Register**. All comments will be posted without change, including any personal information provided. All comments submitted in response to this notice will be included in the record and will be made available to the public on the Internet via *http://www.regulations.gov*. Comments will be made available for public inspection at the above address during regular business hours or can be viewed at: *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Contact Brian E. Griffin, at the address above, or phone (202)720–5021; or fax (202) 690–1527. Copies of the proposed U.S. Standards for Grades of Frozen Okra are available on the Internet at *http://www.regulations.gov*.

**SUPPLEMENTARY INFORMATION:** Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices."

AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. Those United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations but are maintained by USDA, AMS, Fruit and Vegetable Programs. AMS is proposing revisions in the U.S. Standards for Grades of Frozen Okra using the procedures that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

*Background:* AMS received a petition from the American Frozen Food Institute (AFFI) requesting the revision of the standards for frozen okra. The petitioners represent almost all of the processors of frozen okra in the United States. The grade standards are presently based on the variable score points grading system.

It is proposed that the standards be modified to convert them to a statistically-based individual attribute grading system, similar to the United States Standards for Grades of Canned Green and Wax Beans (58 FR 4295; January 14, 1993). The individual attribute grading system uses sample size and acceptable quality levels (AQLs), as well as tolerances and acceptance numbers (number of allowable defects), to determine the quality level of a lot. This change would bring the standards in line with current marketing practices and innovations in processing techniques.

In addition, AMS proposes to replace the dual grade nomenclature with single letter designations. "U.S. Grade A" (or "U.S. Fancy") and "U.S. Grade B" (or "U.S. Extra Standard") would become "U.S. Grade A" and "U.S. Grade B", respectively.

These revisions would also include minor editorial changes. These changes provide a uniform format consistent with recent revisions of other U.S. grade standards. This format has been designed to provide industry personnel and agricultural commodity graders with simpler and more comprehensive standards. Definitions of terms and easy-to-read tables would be incorporated to assure a better understanding and uniform application of the standards.

Prior to undertaking research and other work associated with revising the standards, AMS sought public comments on the petition (see 64 FR 52266).

More recently, a notice requesting additional comments on the proposed revision to the United States Standards for Grades of Frozen Okra was published in the December 12, 2007, **Federal Register** (72 FR 70565). At the request of AFFI, a notice reopening and extending the comment period was published in the May 16, 2008, **Federal Register** (73 FR 28424). A 60 day period was provided for interested persons to submit comments on the proposed standards. AMS received a comment from AFFI that requested a tolerance be established for "Cap Ends" for both "Whole" and "Cut" styles as follows: Portion of "stem" extending between ⅜ and ½ inch beyond the cap scar equals "poor or excessive trim"; "Stem" extending greater than ½ inch beyond cap scar equals "EVM". In addition, the petitioner requested that in Table II, "Excessive Trim (included in Mechanical Damage)" be better defined.

The petitioner noted that this criterion was removed from the prior "Small Pieces/Misshapen" category and moved to the proposed 10 percent "Mechanical Damage" category. For cut style, AFFI stated that less than ¼ inch be the limit for small pieces, but AFFI suggested that tolerances should be based on percent by weight. In doing this, "Small Pieces" would be taken out of the "Mechanical Damage" category.

Lastly, AFFI suggested that with the criteria for "Cap Ends" above and the tolerances given for "Tough Fiber", the "Inedible Stems" category was no longer needed.

Subsequent to their submission of comments, and upon further discussion with AFFI through several discussion drafts between September 2008 and February 2011, the following changes also were proposed. From the definition of "Appearance", the reference to "for regular process" would be deleted. This terminology does not apply to the concept of the term, "Appearance" and its elimination from the proposed standards would have no impact on the grade of the product.

Also, in the definition of the term, Appearance, under Good Appearance, "reasonably free" would be changed to "practically free", and under "Reasonably Good Appearance," "fairly free" would be changed to "reasonably free". Under the term, "Flavor and odor," in the reference to "Normal flavor and odor," "Normal" would be changed to "Reasonably Good".

These changes would provide a uniform format consistent with recent revisions of other U.S. grade standards. The term, "Hard, woody okra material" would be added to the standards. These terms and allowances currently are in the USDA grading manual for frozen okra effective January 1996, and as such, the standards should be updated.

This proposed revision of the frozen okra standard would revise the text of the standard to provide a common language for trade and better reflect the current marketing of frozen okra. The official grade of a lot of frozen okra covered by these standards is determined by the procedures set forth in the "Regulations Governing Inspection and Certification of Processed Products Thereof, and Certain Other Processed Food Products (§ 52.1 to 52.83)."

AMS is publishing this notice with a sixty day comment period that will provide a sufficient amount of time for interested persons to comment on the proposed revision to the standards.

**Authority:** 7 U.S.C. 1621–1627.

Dated: May 9, 2011.

**Ellen King,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–11718 Filed 6–1–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 916 and 917

**[Doc. No. AMS–FV–11–0018; FV11–916/917–4 PR]**

## Nectarines and Fresh Peaches Grown in California; Termination of Marketing Order 916 and the Peach Provisions of Marketing Order 917

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on the proposed termination of the Federal marketing orders regulating the handling of nectarines and fresh peaches grown in California (orders) and the rules and regulations issued thereunder. This action is based upon a decision by the Department of Agriculture (USDA) following referenda conducted among industry growers. As provided under the orders, USDA considers order termination if fewer than two-thirds of growers participating in regularly scheduled continuance referenda, by number and production volume, support continuance. In 2011 referenda, growers failed to support continuance of the orders and their programs in sufficient numbers and USDA now proposes to terminate the orders.

**DATES:** Comments must be received by June 17, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Jerry L. Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901; Fax: (559) 487–5906; or E-mail: *Jerry.Simmons@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This proposal to terminate the orders has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule proposes to terminate Marketing Order 916—the nectarine order—and the peach provisions of Marketing Order 917—the fresh pear and peach order—as well as the pertinent rules and regulations issued thereunder. USDA believes that termination of these programs would be

appropriate because the programs are no longer favored by industry growers.

The orders authorize regulation of the handling of nectarines and fresh pears and peaches grown in California. Sections 916.64 and 917.61 of the orders require USDA to conduct continuance referenda among growers of these fruits every four years to ascertain continuing support for the orders and their programs. These sections further require USDA to terminate the orders if it finds that the provisions of the orders no longer tend to effectuate the declared policy of the Act. Section 608c(16)(A) of the Act requires USDA to terminate or suspend the operation of any order whenever the order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. Finally, USDA is required to notify Congress of the intended terminations not later than 60 days before the date the orders would be terminated.

Continuance referenda were conducted among growers of California nectarines and fresh pears and peaches in January and February 2011. Fewer than two-thirds of participating growers, by number and production volume, voted in favor of continuing the nectarine and peach orders. By contrast, more than 94 percent of pear growers voted to continue the pear order provisions.

Grower support for the programs was similar in the last referenda, which were conducted in 2003. USDA conducted public listening sessions following the referenda and found that the nectarine and peach orders might continue to benefit the industries if modifications were made to the programs. Subsequently, several revisions were made to the orders and the handling regulations over the last several years. Continuance referendum requirements were suspended for 2007 because the orders had just been amended, and the industries wanted to operate the amended orders for a period of time before voting again on continuance.

Nevertheless, the results of the most recent referenda, as well as feedback from the industries over the last few years, suggest that the nectarine and peach programs no longer meet industry needs and that the benefits of such programs no longer outweigh costs to handlers and growers. USDA believes that the referendum results and industry feedback support termination of the programs.

As stated earlier, pear growers in the most recent referendum, as well as in previous referenda, supported continuance of the pear order provisions, which have been suspended since 1994 (59 FR 10055; March 3, 1994). USDA does not intend to terminate the pear order provisions at this time. The remainder of this document pertains to the termination of the nectarine and peach order provisions only.

The nectarine order has been in effect since 1958, and the peach order since 1939. Operating under the management umbrella of the California Tree Fruit Agreement (CTFA), the orders have provided the California fresh tree fruit industries with authority for grade, size, quality, maturity, pack, and container regulations, as well as the authority for mandatory inspection. The orders also authorize production research and marketing research and development projects, as well as the necessary reporting, recordkeeping, and assessment functions required for operation.

Based on the referendum results and other pertinent factors, USDA suspended the orders' handling regulations on April 19, 2011 (76 FR 21615). The suspended handling regulations consist of minimum quality and inspection requirements for nectarines and peaches marked with the "California Well Matured" label, which is available for use only by handlers complying with prescribed quality and maturity requirements under the orders. As well, all reporting and assessment requirements were suspended.

Originally established to maintain the orderly marketing of California tree fruit, the quality regulations under the order evolved over the years to reflect industry trends. The "California Well Matured" label was developed to define standards for premium quality fruit harvested and packed at its peak to satisfy customer demands. Working with the Federal and Federal-State Inspection Programs, the Nectarine Administrative Committee and Peach Commodity Committee (committees), which administer the day-to-day operations of the programs, recommended variety-specific size and maturity standards that were incorporated into the regulations. These standards helped ensure that the industry marketed and shipped the highest quality fruit, which in turn supported increased returns to growers and handlers. A "utility grade" was defined to allow for the movement of a certain percentage of lesser quality fruit to markets where it could be sold without undermining the industry's overall marketing goals.

Funded through assessments paid by handlers, the committees sponsored production research programs to address grower needs such as pesticide use and development of new fruit varieties. As well, post-harvest handling concerns, such as container and pack configuration, were addressed through committee-funded research. Assessment funds were also used to fund market research and development projects, promoting California tree fruit in both domestic and international markets.

In recent years, changes in the industry led the committees to reduce the number of programs they supported through the orders. Because many customers now establish their own quality standards, the committees felt it was no longer essential to mandate inspection and certification of packed fruit to marketing order standards. During the last few years, only those handlers wishing to use the "California Well Matured" label were required to obtain inspection and certification. With the consolidation of many smaller farms, larger companies have undertaken their own research and promotion programs, thus minimizing the desirability of committee-funded generic programs.

The industries proposed several amendments to the orders, which were effectuated in 2006 and 2007 (71 FR 41345; July 21, 2006). The amendments modernized the orders to streamline administration of the programs. The district boundaries within the regulated production areas were redefined, and the committee structures and nomination procedures were modified to provide greater opportunities for participation in committee activities by industry members.

Despite USDA efforts to help refine the programs over the past several years, growers have continued to express their belief that the programs no longer meet their needs. These referendum results demonstrate a lack of grower support needed to carry out the objectives of the Act. Thus, it has been determined that the provisions of the orders no longer tend to effectuate the declared policy of the Act and should be terminated.

Specifically, part 916, regulating the handling of nectarines grown in California would be removed from the Code of Federal Regulations. In part 917, which regulates the handling of both pears and peaches, §§ 916.8, 917.22, 917.150, 917.258, 917.259, 917.442, and 917.459, which relate solely to peaches, would be removed. §§ 917.4, 917.5, 917.6, 917.15, 917.20, 917.24, 917.25, 917.26, 917.28, 917.29, 917.34, 917.35, 917.37, 917.100, 917.119, and 917.143 would be revised to remove references to peaches and to conform to removal of other sections. In some sections of part 917, language relating to the regulation of pears is currently suspended. Such suspensions

would be lifted to facilitate revision of these sections. Finally, the remaining provisions and administrative rules and regulations under part 917 would be suspended indefinitely.

This proposed rule is intended to solicit input and any additional information available from interested parties regarding whether the nectarine and peach order provisions should be terminated. USDA will evaluate all available information prior to making a final determination on this matter. Termination of the orders would become effective only after a 60-day notification to Congress, as required by law.

**Initial Regulatory Flexibility Analysis**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 97 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 447 growers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural growers are defined as those having annual receipts of less than $750,000. A majority of these handlers and growers may be classified as small entities.

For the 2010 marketing season, the committees' staff estimated that the average handler price received was $10.50 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 666,667 containers to have annual receipts of $7,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2010 season, the committees' staff estimates that approximately 46 percent of handlers in the industry would be considered small entities.

For the 2010 marketing season, the committees' staff estimated the average grower price received was $5.50 per container or container equivalent for nectarines and peaches. A grower would have to produce at least 136,364 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average grower price received during the 2010 season, the committees' staff estimates that more than 80 percent of the growers within the industry would be considered small entities.

This rule proposes to terminate the Federal marketing orders for nectarines and peaches grown in California, and the rules and regulations issued thereunder. USDA believes that the orders no longer meet the needs of growers and handlers. The results of recent grower referenda and experience with the industries support order terminations.

Sections 916.64 and 917.61 of the orders provide that USDA shall terminate or suspend any or all provisions of the orders when a finding is made that the orders do not tend to effectuate the declared policy of the Act. Furthermore, section 608c(16)(A) of the Act provides that USDA shall terminate or suspend the operation of any order whenever the order or provision thereof obstructs or does not tend to effectuate the declared policy of the Act. An additional provision requires that Congress be notified not later than 60 days before the date the orders would be terminated.

Although marketing order requirements are applied to handlers, the costs of such requirements are often passed on to growers. Termination of the orders, and the resulting regulatory relaxation, would therefore be expected to reduce costs for both handlers and growers.

As an alternative to this rule, AMS considered not terminating the nectarine and peach order provisions. In that case, the industries could have recommended further refinements to the orders and the handling regulations in order to meet current marketing needs. However, such changes made to the programs over the last several years have failed to improve the programs enough to warrant continuing grower support. Therefore, this alternative was rejected, and AMS recommended that the programs be terminated.

This proposed rule is intended to solicit input and other available information from interested parties on whether the orders should be terminated. USDA will evaluate all available information prior to making a final determination on this matter.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the information collection requirements being terminated were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. Termination of the reporting requirements under the orders would reduce the reporting and recordkeeping burden on California nectarine and peach handlers by 339.45 hours, and should further reduce industry expenses. Since handlers would no longer be required to file forms with the Committee, this proposed rule would thus not impose any additional reporting or recordkeeping requirements on either small or large entities.

On February 25, 2011, AMS published a notice and request for comments regarding the request for OMB approval of a new information collection for nectarine and peach handlers (76 FR 10555). Five new forms were proposed for the collection of industry information that would have facilitated administration of the orders. Such information collection would have increased the annual reporting burden for industry handlers by 2,878.70 hours. The request for OMB approval of the new information collection has been withdrawn.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The grower referendum was well publicized in the production area, and referendum ballots were mailed to all known growers of nectarines and peaches in California. As well, all interested persons have been invited to attend the committees' meetings over the years and participate in discussions regarding the programs developed under the orders. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may

be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Based on the foregoing, and pursuant to section 608c(16)(A) of the Act and §§ 916.64 and 917.61 of the orders, USDA is proposing termination of the orders. Upon termination of the orders, trustees would be appointed to conclude and liquidate the affairs of the committees, and would continue in that capacity until discharged by USDA. In addition, USDA would notify Congress 60 days in advance of termination pursuant to section 608c(16)(A) of the Act.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because (1) growers did not support continuance of the order in the recent referenda, (2) USDA announced its intent to terminate the orders through a press release issued March 25, 2011, and (3) all nectarine and peach handling regulations have been suspended. All written comments timely received will be considered before a final determination is made on this matter.

**List of Subjects**

*7 CFR Part 916*

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

*7 CFR Part 917*

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR chapter IX is proposed to be amended as follows:

## PART 916—[REMOVED]

1. Under the authority of 7 U.S.C. 601–674, 7 CFR part 916 is removed.

## PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

2. The authority citation for 7 CFR part 917 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

### §§ 917.1 through 917.3 [Suspended]

3. Sections 917.1 through 917.3 are suspended indefinitely.

### § 917.4 [Amended]

4. In § 917.4, lift the suspension of January 1, 2007 (71 FR 41351); remove paragraphs (a) and (b); redesignate paragraph (c) as paragraph (a); and suspend the section indefinitely.

### § 917.5 [Amended]

5. In § 917.5, remove the second sentence and suspend the section indefinitely.

### § 917.6 [Amended]

6. In § 917.6, remove the words "That for peaches, packing or causing the fruit to be packed also constitutes handling; Provided further," and suspend the section indefinitely.

### § 917.7 [Suspended]

7. Section 917.7 is suspended indefinitely.

### § 917.8 [Removed]

8. Remove § 917.8.

### § 917.9 [Suspended]

9. Section 917.9 is suspended indefinitely.

### §§ 917.11 through 917.14 [Suspended]

10. Sections 917.11 through 917.14 are suspended indefinitely.

### § 917.15 [Amended]

11. In § 917.15, lift the suspension of April 4, 1994 (59 FR 10055), remove the words "§§ 917.21 through 917.22," and add in their place the words "§ 917.21," and suspend the section indefinitely.

### §§ 917.16 through 917.19 [Suspended]

12. Sections 917.16 through 917.19 are suspended indefinitely.

13. In § 917.20, lift the suspension of April 4, 1994 (59 FR 10055), and revise the section to read as follows, and suspend the section indefinitely:

### § 917.20 Designation of members of commodity committees.

There is hereby established a Pear Commodity Committee consisting of 13 members. Each commodity committee may be increased by one public member nominated by the respective commodity committee and selected by the Secretary. The members of each said committee shall be selected biennially for a term ending on the last day of February of odd numbered years, and such members shall serve until their respective successors are selected and have qualified. The members of each commodity committee shall be selected in accordance with the provisions of § 917.25.

### § 917.22 [Removed]

14. Remove § 917.22.

15. In § 917.24, lift the suspensions of April 4, 1994 (59 FR 10055), and February 21, 2007 (72 FR 7821), revise the section, and suspend the section indefinitely. The revision reads as follows:

### § 917.24 Procedure for nominating members of various commodity committees.

(a) The Control Committee shall hold or cause to be held not later than February 15 for pears of each odd numbered year a meeting or meetings of the growers of the fruits in each representation area set forth in § 917.21. These meetings shall be supervised by the Control Committee, which shall prescribe such procedures as shall be reasonable and fair to all persons concerned.

(b) With respect to each commodity committee, only growers of the particular fruit who are present at such nomination meetings or represented at such meetings by duly authorized employees may participate in the nomination and election of nominees for commodity committee members and alternates. Each such grower, including employees of such grower, shall be entitled to cast but one vote for each position to be filled for the representation area in which he produces such fruit.

(c) A particular grower, including employees of such growers, shall be eligible for membership as principle or alternate to fill only one position on a commodity committee. A grower nominated for membership on the Pear Commodity Committee must have produced at least 51 percent of the pears shipped by him during the previous fiscal period, or he must represent an organization which produced at least 51 percent of the pears shipped by it during such period.

### § 917.25 [Amended]

16. In § 917.25, lift the suspension of January 1, 2007 (71 FR 41352), remove the paragraph (a) designation and remove paragraph (b), and suspend the section indefinitely.

### § 917.26 [Amended]

17. In § 917.26, lift the suspension of April 4, 1994 (59 FR 10055), remove the references "§§ 917.21 and 917.22" and add in their place the reference "§ 917.21," and suspend the section indefinitely.

### § 917.27 [Suspended]

18. Section 917.27 is suspended indefinitely.

### § 917.28 [Amended]

19. In § 917.28, lift the suspension of April 4, 1994 (59 FR 10055), remove the references "§§ 917.16, 917.21, and 917.22" and add in their place the

references "§§ 917.16 and 917.21," and suspend the section indefinitely.

**§ 917.29 [Amended]**

20. In § 917.29, lift the suspension of April 4, 1994 (59 FR 10055), remove the words "and of the Peach Commodity Committee" and "each" from paragraph (b), remove the final sentence of paragraph (d), and suspend the section indefinitely.

**§§ 917.30 through 917.33 [Suspended]**

21. Sections 917.30 through 917.33 are suspended indefinitely.

**§ 917.36 [Suspended]**

22. Section 917.36 is suspended indefinitely.

**§ 917.34 [Amended]**

23. In § 917.34, lift the suspension of April 4, 1994 (59 FR 10055), remove the references "§§ 917.21 and 917.22" in paragraph (k) and add in their place the references "§ 917.21," and suspend the section indefinitely.

**§ 917.35 [Amended]**

24. In § 917.35, lift the suspension of April 4, 1994 (59 FR 10055), remove the words "Peach and" and "each" wherever they appear in paragraph (a), remove the final sentence of paragraph (d), and suspend the section indefinitely.

**§ 917.37 [Amended]**

25. In § 917.37, remove the final three sentences of paragraph (b) and suspend the section indefinitely.

**§§ 917.38 through 917.43 [Suspended]**

26. Sections 917.38 through 917.43 are suspended indefinitely.

**§ 917.45 [Suspended]**

27. Section 917.45 is suspended indefinitely.

**§ 917.50 [Suspended]**

28. Section 917.50 is suspended indefinitely.

**§§ 917.60 through 917.69 [Suspended]**

29. Sections 917.60 through 917.69 are suspended indefinitely.

**§ 917.100 [Amended]**

30. In § 917.100, lift the suspension of April 4, 1994 (59 FR 10055), remove the words "and peaches," and suspend the section indefinitely.

**§§ 917.101 through 917.115 [Suspended]**

31. Sections 917.101 through 917.115 are suspended indefinitely.

**§ 917.119 [Amended]**

32. In § 917.119, remove paragraph (a), redesignate paragraphs (b) through (e) as paragraphs (a) through (d), and suspend the section indefinitely.

**§ 917.122 [Suspended]**

33. Section 917.122 is suspended indefinitely.

**§ 917.143 [Amended]**

34. In § 917.143, lift the suspension of April 4, 1994 (59 FR 10055); remove the words "and peaches" from paragraph (b) introductory text and from paragraphs (b)(1), (b)(2), and (b)(4); remove the words "and 200 pounds of peaches" from paragraph (b)(3); and suspend the section indefinitely.

**§ 917.150 [Removed]**

35. Remove § 917.150.

**§ 917.258 [Removed]**

36. Remove § 917.258.

**§ 917.259 [Removed]**

37. Remove § 917.259.

**§ 917.442 [Removed]**

38. Remove § 917.442.

**§ 917.459 [Removed]**

39. Remove § 917.459.

Dated: May 24, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–13498 Filed 6–1–11; 8:45 am]

BILLING CODE 3410–02–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Chapter III

**[Docket No. SSA–2011–0042]**

### Retrospective Review Under E.O. 13563

**AGENCY:** Social Security Administration.

**ACTION:** Request for information.

**SUMMARY:** In accordance with Executive Order (E.O.) 13563, "Improving Regulation and Regulatory Review," we are announcing that our preliminary plan for retrospective review is available for public comment. We are now requesting comments on the plan.

**DATES:** To be sure that we consider your comments, we must receive them by June 27, 2011.

**ADDRESSES:** Please send your comments to *RegsReview@ssa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Martin Sussman, Senior Advisor for Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1767. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

**SUPPLEMENTARY INFORMATION:** On January 18, 2011, the President issued E.O. 13563, "Improving Regulation and Regulatory Review," which requires Federal agencies to develop a preliminary plan to "periodically review its existing significant regulations" (section 6(b)). On January 25, 2011, we issued a press release and posted information on our Open Government Web site requesting public comment about which of our regulations we should review to ensure they are not outmoded, ineffective, insufficient, or excessively burdensome.

We developed a preliminary plan for retrospective review and submitted it to the Office of Information and Regulatory Affairs in the Office of Management and Budget. The plan focuses on our process for updating the Listing of Impairments (Listings) that we use to evaluate disability claims under titles II and XVI of the Social Security Act (Act). The listings are examples of impairments that we consider severe enough to prevent an adult from doing any gainful activity or that we consider severe enough to result in marked and severe functional limitations for a child seeking SSI payments. The plan also includes two initiatives to reduce paperwork burdens on the public imposed by certain agency regulations.

We have posted the preliminary plan on our Open Government Web site, *http://www.socialsecurity.gov/open/regsreview*, and are now requesting public comments on the plan. Please note that in this notice, we are not requesting comments on the content of the Listings, but rather on the plan itself, which describes our process for updating the Listings. We will carefully review all comments, but we will not to respond to them individually.

Dated: May 25, 2011.

**Dean Landis,**

*Deputy Chief of Staff, Social Security Administration.*

[FR Doc. 2011–13620 Filed 6–1–11; 8:45 am]

BILLING CODE 4191–02–P

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1602

**RIN 3046–AA89**

### Recordkeeping and Reporting Requirements Under Title VII, the ADA, and GINA

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Equal Employment Opportunity Commission ("EEOC" or "Commission") proposes to extend its existing recordkeeping requirements under title VII of the Civil Rights Act of 1964 (Title VII) and the Americans with Disabilities Act (ADA) to entities covered by title II of the Genetic Information Nondiscrimination Act of 2008 ("GINA"), which prohibits employment discrimination based on genetic information.

**DATES:** Written comments must be received on or before August 1, 2011. Pursuant to 42 U.S.C. 2000e–8(c), a public hearing concerning these proposed changes will be held at a place and time to be announced.

**ADDRESSES:** Send written comments by mail to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Suite 6NE03F, Washington, DC 20507. Written comments of six or fewer pages may be faxed to the Executive Secretariat at (202) 663–4114. (There is no toll free FAX number.) Receipt of facsimile transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll free numbers.) In lieu of sending written comments, comments may be submitted to EEOC electronically on the Federal eRulemaking Portal: *http://www.regulations.gov.* After accessing this Web site, follow its instructions for submitting comments.

All comments received will be posted without change to *http://www.regulations.gov,* including any personal information you provide. Copies of the received comments also will be available for inspection in the EEOC Library by advance appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays. Persons who schedule an appointment in the EEOC Library and need assistance to view the comments will be provided with appropriate aids upon request, such as readers or print magnifiers. To schedule an appointment to inspect the comments at the EEOC Library, contact the EEOC Library by calling (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll free numbers.)

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Schlageter, Assistant Legal Counsel, (202) 663–4668, or Erin N. Norris, Senior Attorney, (202) 663–4876, Office of Legal Counsel, 131 M Street, NE., Washington, DC 20507. Copies of this notice are available in the following alternate formats: Large print, braille, electronic computer disk, and audio tape. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–699–3362 (voice), 1–800–800–3302 (TTY), or 703–821–2098 (FAX—this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** On May 21, 2008, President George W. Bush signed the Genetic Information Nondiscrimination Act of 2008 ("GINA") into law. Title II of GINA protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. Title II of GINA's coverage corresponds with that of title VII of the Civil Rights Act of 1964, as amended, covering employers with 15 or more employees, employment agencies, labor unions, and joint labor-management training programs, as well as Federal sector employers. Title II became effective on November 21, 2009. EEOC has issued interpretive regulations under GINA (See 75 FR 68912). Further, EEOC issued a final rule implementing changes to its administrative and procedural regulations in a separate notice found at 74 FR 63981. In the current rulemaking, EEOC is proposing to amend its recordkeeping regulations to add references to GINA. Neither EEOC's existing recordkeeping regulations nor this proposal requires creation of any documents. The proposed change would impose the same record retention requirements under GINA that are imposed under Title VII and the ADA, *i.e.,* any records made or kept must be retained for the period of time specified in the Title VII and ADA regulations.

The EEOC proposal does not impose any reporting requirements under GINA, but reserves the right in the future to issue reporting regulations as may be necessary to accomplish the purposes of GINA.

Persons wishing to present their views orally should notify the Commission of their desire to do so in writing no later than July 5, 2011 with a request to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Suite 6NE03F, Washington, DC 20507. The request should include a written summary of the remarks to be offered.

## Regulatory Procedures

### *Executive Orders 12866 and 13563*

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review. This rule is not a "significant regulatory action" under section 3(f) of the Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order.

### *Paperwork Reduction Act*

These proposed changes to EEOC's existing regulations contain information collection requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act. It is estimated that the public recordkeeping burden will not increase significantly as a result of the amendments because all employers affected by them are already required to retain all personnel or employment records that they make or keep for one year, and the only new requirement is that they retain those records relevant to a charge of discrimination filed under GINA until the charge is resolved. As required by the Paperwork Reduction Act, the Equal Employment Opportunity Commission is submitting to the Office of Management and Budget a request for approval of these information collection requirements under section 3507(d) of the Act. Organizations or individuals desiring to submit comments for consideration by OMB on these information collection requirements should address them to Chad Lallemand in the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or by e-mail to *Chad_A._Lallemand@omb.eop.gov.*

*Collection title:* Recordkeeping under Title VII, the ADA, and GINA.

*OMB number:* 3046–0040.

*Description of affected public:* Employers with 15 or more employees are subject to Title VII, the ADA, and GINA.

*Number of respondents:* 899,580.

*Reporting hours:* Not applicable.

*Number of forms:* None.

*Federal cost:* None.

*Abstract:* Section 207 of GINA, 42 U.S.C. 2000ff *et seq.,* incorporates the powers, procedures, and remedies found in section 709 of Title VII. Section 709(c) of Title VII, 42 U.S.C. 2000e–8(c), requires the Commission to establish regulations pursuant to which employers subject to the Act shall preserve certain records to assist the EEOC in assuring compliance with the Act's nondiscrimination in employment requirements. Any of the records maintained which are subsequently

disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of sections 706(b) and 709(e) of Title VII. EEOC has issued recordkeeping regulations under Title VII and the ADA which require all covered entities to maintain all employment and personnel records they make or keep for a period of one year and all records relevant to a Title VII or ADA charge until the charge is resolved. The proposed revision will extend these same requirements to records relevant to a GINA charge.

*Burden statement:* This recordkeeping requirement does not require reports or the creation of new documents; it merely requires retention of documents that the employer has already made or kept, and the burden imposed by these regulations is therefore minimal. An employer subject to the existing requirement in 29 CFR part 1602 currently must retain all personnel or employment records made or kept by that employer for one year, and must retain any records relevant to charges filed under Title VII or the ADA until final disposition of those matters, which may be longer than one year. This proposed rulemaking would require employers to also retain documents relevant to charges filed under GINA until final disposition of those charges.

*Existing Burdens Prior to Change*

—*Establishing Recordkeeping System:* There are 899,580 employers subject to the recordkeeping requirement in Part 1602. The currently approved Title VII and ADA recordkeeping requirement in Part 1602 imposes a total burden on covered employers in the aggregate of approximately 16,002 hours, which represents the aggregated time that must be spent by all new firms taken together to ensure that their record maintenance systems comply with EEOC's recordkeeping requirements. Based on the fact that these regulations do not require employers to create any records and do not impose any reporting requirements, but merely require employers to maintain the records that they do create, we estimate that it would take each new firm ten minutes or less to comply. Established firms bear no burden under this analysis, because their systems for retaining Title VII and ADA records are already in place.

—*Retention of Records When Charge Is Filed:* For firms that have recordkeeping systems in place, the fact that a Title VII or ADA charge is filed should not impose any additional burden, because we assume that employers set up their recordkeeping systems in such a way as to ensure that records related to a charge are retained in accordance with EEOC regulations.

*Effect of Proposed Change on Existing Burdens*

—*Establishing Recordkeeping System:* There will be no increase in the existing burden as a result of this proposed change. As stated above, established firms bear no burden because their systems for retaining employment records under Title VII and ADA records are already in place. The burden imposed upon new firms created after the proposed regulatory change becomes effective would be the same as the burden shouldered by new firms prior to the change because it will take no longer to set up a recordkeeping system to retain records relevant to Title VII, ADA, and GINA charges than it did to set up a recordkeeping system to retain records relevant to Title VII and ADA charges. Consequently, the aggregate burden for new firms of establishing a compliant recordkeeping system remains at 16,002 hours.

—*Retention of Records When Charge Is Filed:* The only employers who may be subject to an increased burden are those existing firms that become parties to charges filed under GINA and must therefore ensure that relevant records are retained until the final disposition of the charges. We estimate that an employer that is a party to a GINA charge will need less than ten minutes to ensure that its previously existing system of retaining records pertinent to charges filed under Title VII and the ADA is revised to retain records relating to charges filed under GINA (based upon our estimate that a new firm would need 10 minutes to set up its recordkeeping system to comply with EEOC regulations). Assuming that 200 GINA charges will be filed and using a burden estimate of 10 minutes per charge, the annual aggregate burden would increase by only about 33 hours. This estimated increase is most likely higher than the actual burden because approximately 75 percent of all charges filed under GINA in the last fiscal year were also filed under the ADA. In other words, employers would have been required to maintain the records relevant to 75 percent of the GINA charges under the existing recordkeeping requirements because those records were relevant to ADA charges.

Pursuant to the Paperwork Reduction Act of 1995, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission'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 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.

*Regulatory Flexibility Act*

Title II of GINA applies to all employers with fifteen or more employees, approximately 822,000 of which are small firms (entities with 15–500 employees) according to data provided by the Small Business Administration Office of Advocacy. *See Firm Size Data* at *http://sba.gov/advo/research/data.html#us.* We estimate that there will be 200 new charges filed under GINA per year. We estimate that typical human resources professionals will need to dedicate no more than ten minutes per charge to satisfy the requirements of the amended regulation by altering the employer's record retention system to retain any personnel documents relevant to a charge of discrimination under GINA until the resolution of the matter. We further estimate that the median hourly pay rate of an HR professional is approximately $46.40. *See* Bureau of Labor Statistics, Occupational Employment and Wages, May 2009 at *http://www.bls.gov/oes/current/oes113049.htm.* Even assuming that every one of the estimated 200 GINA charges is filed against a small business, EEOC does not believe that a cost of approximately $7.73 per charge will be significant for the impacted small entities. Further, if each of the 200 GINA charges was filed against a different small entity, 200 affected firms out of 822,000 is not a substantial number of small firms. Accordingly, the Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because any burden it may impose on

business entities is minimal. For this reason, a regulatory flexibility analysis is not required.

*Unfunded Mandates Reform Act of 1995*

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

*Congressional Review Act*

This action does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**List of Subjects in 29 CFR Part 1602**

Administrative practice and procedure, Equal Employment Opportunity.

For the Commission.

Dated: May 25, 2011.

**Jacqueline A. Berrien,**

*Chair.*

Accordingly, part 1602 is proposed to be amended as follows:

## PART 1602—RECORDKEEPING AND REPORTING REQUIREMENTS UNDER TITLE VII, THE ADA, AND GINA

1. The authority citation for part 1602 continues to read as follows:

**Authority:** 42 U.S.C. 2000e–8, 2000e–12; 44 U.S.C. 3501 *et seq.;* 42 U.S.C. 12117; 42 U.S.C. 2000ff–6.

2. Amend Part 1602 by removing the words "title VII or the ADA" and adding in their place the words "title VII, the ADA, or GINA" in the following places:

- § 1602.14;
- § 1602.21(b);
- § 1602.28(a);
- § 1602.31.

[FR Doc. 2011–13629 Filed 6–1–11; 8:45 am]

BILLING CODE 6570–01–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0125]**

**RIN 1625–AA11**

## Regulated Navigation Area; Magothy River, Sillery Bay, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary regulated navigation area (RNA) in certain waters of the Magothy River, in Sillery Bay, Maryland, on July 23, 2011. This RNA is necessary to provide for the safety of life, property and the environment. This RNA restricts the movement of vessels throughout the regulated area during The Bumper Bash 2011 event.

**DATES:** Comments and related material must be received by the Coast Guard on or before July 5, 2011. Requests for public meetings must be received by the Coast Guard on or before the end of the comment period.

**ADDRESSES:** You may submit comments identified by docket number USCG–2011–0125 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 Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, e-mail *Ronald.L.Houck@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–2011–0125), 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–2011–0125" 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–2011–0125" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

**Privacy Act**

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

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one on or before the end of the comment period 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 July 23, 2011, hundreds of recreational boaters are expected to gather in Sillery Bay at Dobbins Island, Maryland for an event called "The Bumper Bash 2011." The activity began in 2007. Due to the growing presence of boaters in recent years, the annual event has become increasingly congested. An estimated 700 recreational boats were anchored or moored alongside other boats (rafted). The gathering of persons on recreational vessels or other water craft create large lines of rafted boats filling in the beachfront area of Dobbins Island. The persons and vessels exceeded a safe limit. Accidental drownings, personnel injuries, boat fires, boat capsizings and sinkings, and boating collisions are safety concerns during such overcrowded events. Access on the water for emergency response to the beach area is critical. The Coast Guard has the authority to impose appropriate controls on activities that may pose a threat to persons, vessels and facilities under its jurisdiction. The Coast Guard proposes to establish a temporary RNA that will be enforced during a gathering of persons on recreational vessels and other water craft held in the Magothy River, in Sillery Bay, Maryland. The proposed rule is needed to control movement within a waterway that is expected to be populated by persons and vessels seeking to attend The Bumper Bash 2011 event.

**Discussion of Proposed Rule**

The Coast Guard anticipates a large recreational boating fleet in the Magothy River, in Sillery Bay, during The Bumper Bash at Dobbins Island, Maryland on July 23, 2011. Due to the need for vessel control during the activity, vessel traffic will be restricted to provide for the safety of persons and vessels within the regulated area.

The purpose of this rule is to promote maritime safety, and to protect the environment and mariners transiting the area from the potential hazards associated with a large gathering of recreational vessels and other watercraft along a confined beachfront area with swimmers and others present. This rule proposes to establish a temporary RNA in the Magothy River, in Sillery Bay, within lines connecting the following positions: from position latitude 39°04′48″ N, longitude 076°27′35″ W; thence to position latitude 39°04′48″ N, longitude 076°27′19″ W; thence to position latitude 39°04′59″ N, longitude 076°27′45″ W; thence to position latitude 39°04′59″ N, longitude 076°28′01″ W; thence to position latitude 39°04′41″ N, longitude 076°27′51″ W. All coordinates reference Datum NAD 1983. The rule will impact the movement of all persons and vessels in the regulated area, and will limit the density of vessels and other watercraft operating, remaining or anchoring within the regulated area at the discretion of the District Commander, to ensure an open water route remains accessible to law enforcement and emergency personnel during the effective period. Public vessels located within the regulated area will not contribute to the density determination.

**Regulatory Analyses**

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

**Regulatory Planning and Review**

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect and vessels transiting the Magothy River may proceed safely around the RNA. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

**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 may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate, remain or anchor within the RNA, from 8 a.m. until 10 p.m. on July 23, 2011. This temporary RNA will not have a significant economic impact on a substantial number of small entities for the following reasons. Traffic would be allowed to pass within the RNA with the permission of the District Commander. Vessels transiting the Magothy River may proceed safely around the RNA. Also, the Coast Guard will issue maritime advisories widely available to users of the waterway before the effective period.

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 Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674. 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 involves establishing a temporary regulated navigation area. 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.

**Words of Issuance and Proposed Regulatory Text**

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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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 temporary § 165.T05–0125 to read as follows:

### § 165.T05–0125 Regulated Navigation Area; Magothy River, Sillery Bay, MD.

(a) *Regulated area.* The following area is a regulated navigation area: All waters of the Magothy River, in Sillery Bay, within lines connecting the following positions: from position latitude 39°04′48″ N, longitude 076°27′35″ W; thence to position latitude 39°04′48″ N, longitude 076°27′19″ W; thence to position latitude 39°04′59″ N, longitude 076°27′45″ W; thence to position latitude 39°04′59″ N, longitude 076°28′01″ W; thence to position latitude 39°04′41″ N, longitude 076°27′51″ W. All coordinates reference Datum NAD 1983.

(b) *Definition.* The *District Commander* means the Commander, Fifth Coast Guard District or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Commander, Fifth Coast Guard District to act on his or her behalf, or his or her designated representative.

(c) *Regulations.* The general regulated navigation area regulations found in 33

CFR 165.13 apply to the regulated navigation area created by this temporary section, § 165.T05–0125.

(1) All vessels and persons are prohibited from entering and accessing this regulated navigation area, except as authorized by the District Commander or his or her designated representative.

(2) Persons or vessels requiring entry into or passage within the regulated navigation area must request authorization from the District Commander or his or her designated representative, by telephone at (410) 576–2693 or by marine band radio on VHF–FM Channel 16 (156.8 MHz), from 8 a.m. until 10 p.m. on July 23, 2011. All Coast Guard vessels enforcing this regulated navigation area can be contacted on marine band radio VHF–FM Channel 16 (156.8 MHz).

(3) All vessels and persons must comply with instructions of the District Commander or the designated representative.

(4) The operator of any vessel entering or located within this regulated navigation area shall:

(i) Travel at no-wake speed,

(ii) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(iii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

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

(e) *Enforcement period.* This section will be enforced from 8 a.m. until 10 p.m. on July 23, 2011.

Dated: May 23, 2011.

**William D. Lee,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 2011–13688 Filed 6–1–11; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2010–0798–201133; FRL–9314–2]**

## Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Georgia: Rome; Determination of Attainment by Applicable Attainment Date for the 1997 Annual Fine Particulate Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine pursuant to the Clean Air Act (CAA), that the Rome, Georgia fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as "the Rome Area" or "the Area") attained the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS) by the applicable attainment date of April 5, 2010. The determination of attainment was previously made by EPA on April 5, 2011, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that Rome, Georgia had attained the 1997 annual $PM_{2.5}$ NAAQS. The Rome Area is comprised of Floyd County, Georgia in its entirety. EPA is now proposing to find that the Rome Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date. EPA is proposing this action because it is consistent with the CAA and its implementing regulations.

**DATES:** Comments must be received on or before July 5, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0798, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–0798, 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.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, 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. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R04–OAR–2010–0798. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

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

**SUPPLEMENTARY INFORMATION:**

I. What action is EPA taking?
II. What is the background for this action?
III. What is the air quality in the Rome area for the 1997 annual $PM_{2.5}$ NAAQS for the 2007–2009 monitoring period?
IV. What is the effect of this action?
V. What is the proposed action?
VI. Statutory and Executive Order Reviews

## I. What action is EPA taking?

Based on EPA's review of the quality-assured and certified monitoring data for 2007–2009, and in accordance with section 179(c)(1) of the CAA and EPA's regulations, EPA proposes to determine that the Rome Area has attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

On April 5, 2011, EPA published a final rulemaking making a determination of attainment to suspend the requirements for the Rome 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. *See* 76 FR 18650. Today's proposed action merely makes a determination that the Rome Area has attained the 1997 Annual $PM_{2.5}$ NAAQS by its applicable attainment date. This action is not a re-proposal of the attainment determination to suspend the requirements for the Rome Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard. More information regarding the 1997 annual $PM_{2.5}$ standard and EPA's determination of attainment for the Rome Area is available in 76 FR 18650 (April 5, 2011).

## II. What is the background for this action?

As a nonattainment area for the 1997 annual $PM_{2.5}$ NAAQS, the Rome Area had an applicable attainment date of April 5, 2010 (based on 2007–2009 monitoring data). Pursuant to section 179(c) of the CAA, EPA is required to make a determination on whether the area attained the standard by its applicable attainment date. Specifically, section 179(c)(1) of the CAA reads as follows: "As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date."

## III. What is the air quality in the Rome area for the 1997 annual $PM_{2.5}$ NAAQS for the 2007–2009 monitoring period?

Under EPA regulations at 40 CFR 50.7, the 1997 annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 μg/m³ at all relevant monitoring sites in the subject area.

EPA reviewed the ambient air monitoring data for the Rome Area in accordance with the provisions of 40 CFR part 50, Appendix N. All data considered have been quality-assured, certified, and recorded in EPA's Air Quality System database. This review addresses air quality data collected in the 3-year period 2007–2009, which is the period EPA must consider for areas that had an applicable attainment date of April 5, 2010.

TABLE 1—ANNUAL AVERAGE CONCENTRATIONS IN THE ROME AREA

| | County | Site No. | Annual average concentration (μg/m³) |
|---|---|---|---|
| Without data substitution | Floyd | 13–115–0003 | 13.3 |
| With data substitution | Floyd | 13–115–0003 | 14.6 |

As shown in the above table, during the 2007–2009 design period, the Rome Area met the 1997 annual $PM_{2.5}$ NAAQS both with and without data substitution. The official annual design value for the Rome Area for the 2007–2009 period is 13.3 μg/m³. More detailed information on the monitoring data for the Rome Area during the 2007–2009 design period is provided in EPA's April 5, 2011, final rulemaking to approve the clean data determination for the Rome Area for the 1997 annual $PM_{2.5}$ NAAQS. *See* 76 FR 18650.

## IV. What is the effect of this action?

This action is only a proposed determination that the Rome Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010, consistent with CAA section 179(c)(1). Finalizing this proposed action would not constitute a redesignation of the Rome Area to attainment of 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing this proposed action does not involve approving a maintenance plan for the Rome Area as required under section 175A of the CAA, nor would it find that the Rome Area has met all other requirements for redesignation. Even if EPA finalizes today's proposed action, the designation status of the Rome Area would remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.[1]

## V. What is the proposed action?

EPA is proposing to determine, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Rome Area has attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. This proposed

[1] Per section 176(c) of the CAA, transportation conformity requirements apply in areas that are designated nonattainment and those areas that are redesignated from nonattainment to attainment.

action is being taken pursuant to section 179(c)(1) of the CAA, and is consistent with the CAA and its implementing regulations.

## VI. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 proposed determination that the Rome Area attained the 1997 annual average $PM_{2.5}$ NAAQS does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIPs are not approved to apply in Indian country located in the states, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 23, 2011.

**Gwendolyn Keyes Fleming,**

*Regional Administrator, Region 4.*

[FR Doc. 2011–13668 Filed 6–1–11; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2011–0408–201132; FRL–9314–1]**

## Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Alabama, Georgia, and Tennessee: Chattanooga and Macon; Determination of Attainment by Applicable Attainment Date for the 1997 Annual Fine Particulate Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine pursuant to Clean Air Act (CAA), that the Chattanooga, Tennessee-Georgia, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as "the Chattanooga Area") and the Macon, Georgia $PM_{2.5}$ nonattainment area (hereafter referred to as "the Macon Area") attained the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS) by the applicable attainment date of April 5, 2010. The determinations of attainment were previously proposed by EPA on March 22, 2011, and were based on quality-assured and certified monitoring data for the 2007—2009 monitoring period. The Chattanooga Area is comprised of Hamilton County in Tennessee, Catoosa and Walker Counties in Georgia, and a portion of Jackson County in Alabama. The Macon Area is comprised of Bibb County in its entirety and a portion of Monroe County in Georgia. EPA is now proposing to find that both of the above-identified areas attained the 1997 annual $PM_{2.5}$ NAAQS by their applicable attainment dates. EPA is proposing these actions because they are consistent with the CAA and its implementing regulations.

**DATES:** Comments must be received on or before July 5, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0408, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov*.
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2011–0408, 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.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, 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. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R04–OAR–2011–0408. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

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

**SUPPLEMENTARY INFORMATION:**

I. What are the actions EPA is taking?
II. What is the background for these actions?
III. What is the air quality for the 1997 annual $PM_{2.5}$ NAAQS for the 2007–2009 monitoring period?
A. Chattanooga
B. Macon
IV. What is the effect of these actions?
V. What are the proposed actions?
VI. Statutory and Executive Order Reviews

## I. What are the actions is EPA taking?

Based on EPA's review of the quality-assured and certified monitoring data for 2007–2009, and in accordance with section 179(c)(1) of the CAA and EPA's regulations, EPA proposes to determine that the Chattanooga and Macon Areas attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

On March 22, 2011, EPA published two proposed rulemakings to make determinations of attainment to suspend the requirements for the Chattanooga and Macon Areas to submit attainment demonstrations and associated reasonably available control measures (RACM), reasonable further progress (RFP) plans, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS so long as the Areas continue to attain the 1997 annual $PM_{2.5}$ NAAQS. *See* 76 FR 15895 for the proposed rulemaking related to the Chattanooga Area; *see* 76 FR 15892 for the proposed rulemaking related to the Macon Area. Those proposed rulemakings also include useful background information on the $PM_{2.5}$ NAAQS relevant to the Chattanooga and Macon Areas. EPA is moving forward with final action on the proposals to find that the Chattanooga and Macon Areas are attaining the $PM_{2.5}$ NAAQS. Today's proposed actions, however, make determinations that the Chattanooga and Macon Areas attained the1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. These actions are not a re-proposal of the March 22, 2011, attainment determinations to suspend the requirements for the Chattanooga and Macon Areas to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard. Rather, today's actions are simply focused on the date by which the areas had attaining data.

## II. What is the background for these actions?

As nonattainment areas for the 1997 annual $PM_{2.5}$ NAAQS, the Chattanooga and Macon Areas had an applicable attainment date of April 5, 2010 (based on 2007–2009 monitoring data). Pursuant to section 179(c) of the CAA, EPA is required to make a determination on whether the Areas attained the standard by their applicable attainment date. Specifically, section 179(c)(1) of the CAA reads as follows: "As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date." Today's action is EPA's proposal that the Chattanooga and Macon areas attained the annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

## III. What is the air quality for the 1997 annual $PM_{2.5}$ NAAQS for the 2007–2009 monitoring period?

Under EPA regulations at 40 CFR 50.7, the 1997 annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 $\mu g/m^3$ at all relevant monitoring sites in the subject area.

EPA reviewed the ambient air monitoring data for the Chattanooga and Macon Areas in accordance with the provisions of 40 CFR part 50, Appendix N. All data considered have been quality-assured, certified, and recorded in EPA's Air Quality System database. This review addresses air quality data collected in the 3-year period from 2007–2009. The 3-year period from 2007–2009 is the period EPA must consider for areas that had an applicable attainment date of April 5, 2010.

### *A. Chattanooga*

TABLE 1—ANNUAL AVERAGE CONCENTRATIONS IN THE CHATTANOOGA AREA (2007–2009)

| Site name | Site No. | Annual average concentration (μg/m³) |
|---|---|---|
| Tombras Avenue | 47–065–0031 | 12.6 |
| Soddy Daisy High School | 47–065–1011 | 11.7 |
| Siskin Drive | 47–065–4002 | 12.7 |
| Rossville | 13–295–0002 | [1] 12.3 |

As shown above in Table 1, during the 2007–2009 design period, the Chattanooga Area met the 1997 annual $PM_{2.5}$ NAAQS. The official annual design value for the Chattanooga Area for the 2007–2009 period is 12.7 μg/m³. More detailed information on the monitoring data for the Chattanooga Area during the 2007–2009 design period is provided in EPA's March 22, 2011, proposed rulemaking to approve the clean data determination for the Chattanooga Area for the 1997 annual $PM_{2.5}$ NAAQS. *See* 76 FR 15895.

*B. Macon*

TABLE 2—ANNUAL AVERAGE CONCENTRATIONS IN THE MACON AREA (2007–2009)

| Site name | Site No. | Annual average concentration (μg/m³) without data substitution | Annual average concentration (μg/m³) with data substitution |
|---|---|---|---|
| Macon Allied | 13–021–0007 | [2] 13.7 | [3] 14.9 |
| Macon SE | 13–021–0012 | 12.0 | [4] 13.3 |

As shown above in Table 2, during the 2007–2009 design period, the Macon Area met the 1997 annual $PM_{2.5}$ NAAQS both with and without data substitution. The official annual design value for the Macon Area for the 2007–2009 period is 13.7 μg/m³. More detailed information on the monitoring data for the Macon Area during the 2007–2009 design period is provided in EPA's March 22, 2011, proposed rulemaking to approve the clean data determination for the Macon Area for the 1997 annual $PM_{2.5}$ NAAQS. *See* 76 FR 15892.

## IV. What is the effect of these actions?

Today's actions are only proposed determinations that the Chattanooga and Macon Areas attained the 1997 annual $PM_{2.5}$ NAAQS by their applicable attainment date of April 5, 2010, consistent with CAA section 179(c)(1). Finalizing these proposed actions would not constitute a redesignation of either the Chattanooga or Macon Areas to attainment of 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing these proposed actions do not involve approving maintenance plans for either the Chattanooga or Macon Areas as required under section 175A of the CAA, nor would it find that the Chattanooga or Macon Areas have met all other requirements for redesignation. Even if EPA finalizes today's proposed actions, the designation status of the Chattanooga and Macon Areas would remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the individual area meets the CAA requirements for redesignation to attainment and takes action to redesignate the individual area.

## V. What are the proposed actions?

EPA is proposing to determine, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Chattanooga and the Macon Areas attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. These proposed actions are being taken pursuant to section 179(c)(1) of the CAA, and are consistent with the CAA and its implementing regulations.

## VI. Statutory and Executive Order Reviews

These actions propose to make determinations of attainment based on air quality, and would not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do not provide EPA with the discretionary authority to address, as

[1] The Rossville site did not meet 75 percent data completeness for the 2007–2009 time period due to roof replacement and subsequent relocation of the monitor. Because the site passed data substitution analysis, the design value for the Area is the highest reading monitor, which is Tombras Avenue.

[2] Macon Allied design value considers co-located data where primary data are not available.

[3] Macon Allied design value considers data substitution of 58.1 μg/m³ for all missing data in 1st quarter of 2008.

[4] Macon SE Annual Mean considers data substitution for second and fourth quarters of 2008 and 3rd quarter of 2009.

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, these proposed determinations that the Chattanooga and Macon Areas attained the 1997 annual average $PM_{2.5}$ NAAQS by its applicable attainment date do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIPs are not approved to apply in Indian country located in the states, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 23, 2011.

**Gwendolyn Keyes Fleming,**

*Regional Administrator, Region 4.*

[FR Doc. 2011–13670 Filed 6–1–11; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[FWS–R9–ES–2011–0003; MO 92210–1113F120–B6]**

## Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to Reclassify the Straight-Horned Markhor *(Capra falconeri jerdoni)* of Torghar Hills as 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 reclassify the Torghar Hills population of straight-horned markhor, or Suleiman markhor, (*Capra falconeri jerdoni* or *C. f. megaceros*) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that reclassifying this subspecies of markhor in the Torghar Hills of Pakistan may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the entire subspecies to determine if the petitioned action is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the straight-horned markhor or the Torghar Hills population. Based on the status 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 August 1, 2011.

**ADDRESSES:** You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for docket FWS–R9–ES–2011–0003 and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-FWS–R9–ES–2011–0003; 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 Solicited 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), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Information Solicited

When we make a finding that a petition presents substantial information indicating that reclassifying a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the straight-horned markhor from the public, governmental agencies, Tribal communities, the scientific community, industry, and any other interested parties. We seek information on:

(1) The straight-horned markhor's biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy on *Capra falconeri jerdoni* and *C. f. megaceros* to determine if these two subspecies constitute a single subspecies;

(c) Historical and current range including distribution patterns;

(d) Intermountain movement;

(e) Historical and current population levels, and current and projected trends; and

(f) Past and ongoing conservation measures for the subspecies, its habitat, or both.

(g) Information on the straight-horned markhor subspecies for the purpose of determining if the markhor in the Torghar Hills constitutes a distinct vertebrate population segment (DPS; see Evaluation of Listable Entities).

(2) The factors that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Information on whether changing climatic conditions are affecting the subspecies or its habitat.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

We will base our status review on the best scientific and commercial information available, including all information we receive during the public comment period. Please note that comments merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available." At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

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 commence a review of the status of the species, which will be subsequently summarized in our 12-month finding.

### *Petition History*

On August 18, 2010, we received a petition dated August 17, 2010, from John Jackson of Conservation Force, on behalf Dallas Safari Club, Houston Safari Club, African Safari Club of Florida, The Conklin Foundation, Grand Slam Club/Ovis, Wild Sheep Foundation, Jerry Brenner, Steve Hornaday, Alan Sackman, and Barbara Lee Sackman, requesting the U.S. Fish and Wildlife Service (Service) downlist the Torghar Hills population of the Suleiman markhor (*Capra falconeri jerdoni* or *C. f. megaceros*), in the Balochistan Province of Pakistan, from endangered to threatened under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). In a September 15, 2010, letter to John Jackson, we acknowledged receipt of the petition.

### *Previous Federal Actions*

On June 14, 1976, we published in the **Federal Register** a rule listing the straight-horned markhor, or the Suleiman markhor (*Capra falconeri jerdoni*), and the Kabul markhor (*C. f. megaceros*), as well as 157 other U.S. and foreign vertebrates and invertebrates, as endangered under the Act (41 FR 24062). All species were found to have declining numbers due to the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, sporting, scientific, or educational purposes; the inadequacy of existing regulatory mechanisms; or some combination of the three. However, the main concern was the high commercial importance and the inadequacy of existing regulatory mechanisms to control international trade.

Later, the straight-horned markhor and the Kabul markhor were considered by many authorities to be the single subspecies *C. f. megaceros* (straight-horned markhor). These subspecies currently remain listed as separate entities under the Act. We are requesting information (see Information Solicited) on the taxonomy of both subspecies to determine if these constitute a single subspecies. On March 4, 1999, we received a petition from Sardar Naseer A. Tareen, on behalf of the Society for Torghar Environmental Protection and the International Union for Conservation of Nature (IUCN) Central Asia Sustainable Use Specialist Group, requesting that the Suleiman markhor (*Capra falconeri jerdoni* or *C. f. megaceros*) population of the Torghar Hills region of the Balochistan Province, Pakistan be reclassified from endangered to threatened under the Act. On September 23, 1999 (64 FR 51499), we published in the **Federal Register** a finding, in accordance with section 4(b)(3)(A) of the Act, that the petition had presented substantial information indicating that the requested reclassification may be warranted and initiated a status review. We opened a comment period, which closed January 21, 2000, to allow all interested parties to submit comments and information. A 12-month finding was never completed.

## Evaluation of Listable Entities

Under section 3(16) of the Act, we may consider for listing any species, including subspecies, of fish, wildlife, or plants, or any DPS of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Such entities are considered eligible for listing under the Act (and, therefore referred to as listable entities) should we determine that they meet the definition of an endangered or threatened species. In this case, the petitioners have requested that the straight-horned markhor in the Torghar Hills of Pakistan be considered a DPS and reclassified from endangered to threatened under the Act.

### *Distinct Vertebrate Population Segment*

Under the Service's "Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act" (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These elements, which are applied similarly for additions to, reclassifications of status under, or removal from the Federal List of Endangered and Threatened Wildlife, include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (*i.e.,* is the population segment endangered or threatened).

### Discreteness

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist

that are significant in light of section 4(a)(1)(D) of the Act.

Desert mountain ranges of Balochistan Province are more or less isolated from one another by intervening valley bottoms. The Torghar Hills, within the Toba Kakar Range, are geographically isolated by broad valleys (Frisina *et al.* 2002, p. 7). To the north and south, the mountain area is bounded by the Kundar River Valley and Khaisor Valley, respectively (Bellon 2008, p. 3). Furthermore, suitable markhor habitat tends to be patchily distributed within mountain ranges. Within the Torghar Hills, habitat to the north is less severe than that preferred by markhor; to the south, habitat is also unsuitable as it is a broad, relatively level valley and inhabited by humans (Frisina *et al.* 2002, p. 7).

The degree to which disjunct populations of markhor interact is unknown because dispersal capability is unknown. However, interaction between populations is assumed to be limited because of the tendency of markhor to restrict themselves to the steeper, cliff-like areas (Frisina *et al.* 1998, p. 10). Although markhor could potentially move into and out of the Torghar Hills, intermountain movement probably rarely occurs due to the lack of suitable habitat (Frisina *et al.* 2002, p. 7) and the presence of people and domestic livestock in intervening valley bottoms.

In summary, the petition and other documents in our files present substantial information indicating that the Torghar Hills population of the straight-horned markhor in Pakistan may meet at least one of the criteria for discreteness under the DPS policy based on marked physical separateness.

Significance

Under our DPS Policy, in addition to our consideration that a population segment is discrete, we consider its biological and ecological significance to the taxon to which it belongs. This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unique or unusual for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics (61 FR 4721; February 7, 1996).

The Torghar Hills population of straight-horned markhor is protected by a private conservation program, the Torghar Conservation Project (TCP). In 1986, the TCP was instituted and run informally by the local Tribal ruling family. The goals of the TCP were to conserve local populations of the Suleiman markhor and the Afghan urial (*Ovis orientalis cycloceros*) and improve the economic condition of local tribesmen. To accomplish this, the local tribesmen refrain from hunting in exchange for employment as salaried game guards to prevent poaching in the Torghar Hills and assist in wildlife surveys. Game guard salaries and other costs of the TCP are covered by fees paid by foreign hunters to hunt a small, controlled number of markhor and urial for trophy (Johnson 1997, pp. 1–3; Ahmed *et al.* 2001, p. 5). In 1994, an officially registered nongovernmental organization, the Society for Torghar Environmental Protection (STEP), was formed to administer the TCP.

Since the TCP was instituted in 1986, the markhor population in the Torghar Hills has been growing steadily from the brink of extinction to a thriving population and is considered "viable" for both population and genetic processes (Johnson 1997, pp. 14–15; Frisina *et al.* 2002, p. 1). The most likely cause of this population growth is the virtually-complete cessation of poaching in the Torghar area accomplished by the TCP (Johnson 1997, pp. 3, 15). Based on the substantial population growth, researchers have concluded that the markhor have responded well to the management and protection provided by the TCP and the program has been a successful tool in conserving the markhor of the Torghar Hills (Johnson 1997, p. 16; Frisina *et al.* 1998, p. 6). This population now represents the highest concentration of markhor in the world (Bellon 2008, pp. 1, 45) and may represent one of the last remaining strongholds for the subspecies (Johnson 1997, p. 16).

In summary, information in the petition and our files may support the significance of a DPS in the Torghar Hills of Pakistan because the loss of this DPS would result in the loss of, perhaps, the most important population for the subspecies' survival, resulting in a significant gap in the range of the subspecies.

**Evaluation of Information for This Finding**

As stated above, the markhor was originally listed as endangered under the Act due to declining numbers and concern over the species' high commercial importance. The outbreak of the Afghanistan war in the late 1970s made weapons and cheap ammunition more readily available and hunters killed females and young indiscriminately (Ahmed *et al.* 2001, p. 4). In the early 1980s the markhor population in the Torghar Hills was thought to be at very low levels, perhaps fewer than 100 individuals.

The petitioners assert that since the TCP was established and poaching essentially eliminated (Woodford *et al.* 2004, p. 181), the population of markhor in the Torghar Hills has increased. In 1994, Johnson (1997, p. 12) estimated the Torghar Hills population of markhor to be 695. Later surveys estimated the population to be 1,298 in 1997; 1,684 in 1999; 2,541 in 2005; and 3,158 in 2008 (Frisina *et* al. 1998, p. 6; Arshad and Khan 2009, p. 9).

In general, markhor are threatened with fragmentation and loss of habitat, competition with domestic livestock, and illegal hunting (CITES 2007, unpaginated). The petitioners assert that the habitat within the core protected area of the TCP is not threatened by grazing of domestic sheep and goats or otherwise at risk of being destroyed, modified, or curtailed. The petitioners also assert that the local people are aware of the potential problems with having excess livestock and are interested in formulating and implementing range management plans (Woodford *et al.* 2004, p. 184). In addition, to improve the health of local domestic livestock, and thereby minimize the risk of disease transfer to the markhor, a community-based Animal Health Service for the domestic livestock within the TCP area has been formulated. Under this plan, a small number of tribesman will be trained as "barefoot vets" and provide vaccines and anti-parasitic medications to the domestic livestock (Woodford *et al.* 2004, p. 185).

The petitioners further assert that the laws of Pakistan, regulations on hunting imposed by the TCP, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) quota and nondetriment determination are more than adequate to protect the straight-horned markhor. Lastly, the petitioners assert that the listing as an endangered species under the Act prevents hunters from bringing hunting trophies home to the United States, creates a disincentive for American hunters to participate in the TCP, and reduces the number of hunts and keeps the price of hunting permits artificially low.

## Finding

On the basis of information provided in the petition we find that the petition presents substantial scientific or commercial information indicating that reclassifying the Torghar Hills population of the straight-horned markhor may be warranted. Therefore, we will initiate a status review to determine if reclassifying the Torghar Hills population of the straight-horned markhor is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this subspecies (see Information Solicited).

It is important to note that the "substantial information" standard for a 90-day finding is in contrast to the Act's "best scientific and commercial data" standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough review of the status of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

## References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R9–ES–2011–0003 and upon request from the Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT.**)

## Author

The primary authors of this notice are the staff members of the Branch of Foreign Species (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: April 15, 2011.

**Rowan W. Gould,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2011–13671 Filed 6–1–11; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R6–ES–2011–0030; 92220–1113–0000–C6]**

**RIN 1018–AW02**

## Endangered and Threatened Wildlife and Plants; Revising the Special Rule for the Utah Prairie Dog

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** Under the Endangered Species Act of 1973, as amended (ESA), we (the U.S. Fish and Wildlife Service (Service/USFWS)) are proposing to revise our special regulations for the conservation of the Utah prairie dog. We are proposing to revise the existing limits on take, and we also propose a new incidental take exemption for otherwise legal activities associated with standard agricultural practices. All other provisions of the special rule not relating to these amendments would remain unchanged. We seek comment from the public and other agencies, and welcome suggestions regarding the scope and implementation of the special rule. After the closing of the comment period, a draft environmental assessment will be prepared on our proposed actions.

**DATES:** We will accept comments received or postmarked on or before August 1, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is Eastern Standard Time on this date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by July 18, 2011.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the box that reads "Enter Keyword or ID," enter the Docket number for this proposed rule, which is FWS–R6–ES–2011–0030. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attention: FWS–R6–ES–2011–0030; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

**FOR FURTHER INFORMATION CONTACT:** For information on Utah prairie dogs see: *http://www.fws.gov/mountain-prairie/species/mammals/UTprairiedog* or *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A04A,* or contact Larry Crist, Field Supervisor, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119 (telephone 801–975–3330; facsimile 801–975–3331). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** Under the ESA, we are proposing to revise our existing special rule for the conservation of the Utah prairie dog in the Code of Federal Regulations (CFR) at 50 CFR 17.40(g). The current special rule, administered by the Utah Division of Wildlife Resources (UDWR), was established in 1991. Since that time, we have evaluated the take authorized by this rule and the methods used to implement it.

We are considering the available information and proposing to revise established limits to permitted take administered by the UDWR. We propose to revise the regulations for where take is allowed to occur, the amount of take that may be permitted, and methods of take that may be permitted. This proposed amendment is largely consistent with past and current practices and permitting as administered by the UDWR under the current special rule. Utah prairie dog populations have remained stable to increasing throughout implementation of the current special rule implemented under the UDWR permit system. We also propose a new incidental take exemption for otherwise legal activities associated with standard agricultural practices.

We seek comment on our proposed rule from the public and other agencies, and welcome suggestions regarding the scope and implementation of the special rule. After the closing of the comment period for this proposed rule, a draft environmental assessment will be prepared on our proposed action.

## Request for Public Comments

You may submit your comments and materials concerning this proposed rule

by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. If you submit a comment via *http://www.regulations.gov,* your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

**Peer Review**

We will seek independent review of the science in this proposed rule to ensure that our final rule is based on scientifically sound data, assumptions, and analyses. We will initiate the peer review immediately following publication of this proposed rule in the **Federal Register**.

We will take into consideration all comments, including peer review comments and any additional information we receive on this proposed rule, during our preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

**Public Hearings**

Requests for public hearings must be received no later than the date given in **DATES**. Such requests must be made in writing and be addressed to the Field Supervisor at the address in the **FOR FURTHER INFORMATION CONTACT** section above.

**Special Rules Under ESA Section 4(d)**

A 4(d) rule functions by prescribing those regulations that are necessary and advisable to conserve a threatened species. The Service has elected to extend all prohibitions under section 9 of the Act to threatened species through a "blanket 4(d) rule" unless otherwise specified in a separate 4(d) rule. Because the blanket rule effectively extends all available prohibitions to threatened species, separate 4(d) rules could be viewed as "exempting," "allowing," or "permitting" acts that would otherwise be prohibited. Instead, it is more accurate to say that a species-specific 4(d) rule supersedes the blanket 4(d) rule for the species at issue, and extends a more tailored set of prohibitions to the species. As a result, there may be some prohibitions that apply to other threatened species that do not apply to the threatened species at issue. In the interest of providing a clear rule with simple language, we will be using "exempt" and "allow" in order to convey that the 4(d) rule will not prohibit certain actions. It is important to note that this use of language is for clarity only. The 4(d) rule will still function by prescribing the regulations necessary and advisable to conserve the Utah Prairie Dog.

**Previous Federal Actions**

The Utah prairie dog (*Cynomys parvidens*) was listed as an endangered species on June 4, 1973 (38 FR 14678), pursuant to the Endangered Species Conservation Act of 1969. On January 4, 1974, this listing was incorporated into the ESA of 1973, as amended (39 FR 1158; see page 1171).

On May 29, 1984, the Service reclassified the Utah prairie dog from endangered to threatened (49 FR 22330) and developed a special rule under section 4(d) of the ESA that allowed regulated take of up to 5,000 animals annually on private lands in Iron County, Utah. On June 14, 1991, we amended the special rule to allow regulated take of up to 6,000 animals annually on private lands throughout the species' range (56 FR 27438).

On February 3, 2003, we received a petition to reclassify the Utah prairie dog from threatened to endangered (Forest Guardians 2003, entire). The petition was based in part on threats to the species associated with the current 4(d) special rule (Forest Guardians 2003, pp. 104–108). On February 21, 2007 (72 FR 7843), we found that the petition did not provide substantial scientific or commercial information indicating that reclassification may be warranted. This decision was challenged by WildEarth Guardians in litigation (described below).

On February 4, 2005, we received a petition under the Administrative Procedure Act (APA) requesting that we issue a rule to restrict the translocation of Utah prairie dogs and to terminate the special 4(d) rule allowing regulated take of Utah prairie dogs (Forest Guardians 2005, entire). On April 6, 2005, we acknowledged receipt of this petition. On February 23, 2009, we issued a final decision in which we denied the petitioned action (USFWS 2009, entire). However, this response acknowledged that we had initiated a process to amend the special 4(d) rule and that we anticipated that a proposed amended special 4(d) rule would soon be published in the **Federal Register** for public comment (USFWS 2009, p. 1). This decision was also challenged by WildEarth Guardians.

On September 28, 2010, United States District Court for the District of Columbia vacated and remanded our February 21, 2007 (72 FR 7843), not-substantial petition finding back to us for further consideration (*WildEarth Guardians* v. *Salazar,* Case 1:08–cv–01596–CKK (D.D.C.), 2010). In the same order, the court upheld our February 23, 2009, decision on the APA petition. This ruling noted that although the level of take allowed in the 1991 special rule may not be biologically sound, some permitted take is advantageous to the Utah prairie dogs' recovery. The court specifically noted that controlled take can stimulate population growth, reduce high-density populations prone to decimation by plague, and, consequently, curb the species' boom-and-bust population cycle. The court declined to weigh in on the precise level of take that should be permitted, concluding that this is a matter squarely within the Service's technical and scientific expertise.

**Background**

*Species Description*

Prairie dogs belong to the Sciuridae family of rodents, which also includes squirrels, chipmunks, and marmots. There are five species of prairie dogs, all of which are native to North America, and all of which have non-overlapping geographic ranges (Hoogland 2003, p. 232). The Utah prairie dog is the smallest species of prairie dog, with individuals that are typically 250 to 400 millimeters (mm) (10 to 16 inches (in.)) long (Hoogland 1995, p. 8)). Weight varies from 300 to 900 grams (g) (0.66 to 2.0 pounds (lb)) in the spring and 500 to 1,500 g (1.1 to 3.3 lb) in the late summer and early fall (Hoogland 1995, p. 8). Utah prairie dogs range in color from cinnamon to clay. The Utah prairie dog is distinguished from other prairie dog species by a relatively short (30 to 70 mm (1.2 to 2.8 in.) white- or gray-tipped tail (Pizzimenti and Collier 1975, p. 1; Hoogland 2003, p. 232) and a black "eyebrow" above each eye. They are closely related to the white-tailed prairie dog (Hoogland 1995, p. 8).

*Life History*

Utah prairie dogs are hibernators and spend 4 to 6 months underground each year during the harsh winter months, although they are seen above ground during mild weather (Hoogland 1995, pp.18–19). Adult males cease surface activity during August and September, and females follow suit several weeks later. Juvenile prairie dogs remain above ground 1 to 2 months longer than adults and usually go into hibernation by late November. Emergence from hibernation usually occurs in late February or early March (Hoogland 2003, p. 235).

Mating begins 2 to 5 days after the females emerge from hibernation, and can continue through early April (Hoogland 2003, p. 236). Female Utah prairie dogs come into estrus (period of greatest female reproductive responsiveness, usually coinciding with ovulation) and are sexually receptive for several hours for only 1 day during the breeding season (Hoogland 2003, p. 235). However, on average, 97 percent of adult female Utah prairie dogs are in breeding condition each year and do successfully produce a litter (Mackley 1988, pp. 1, 9).

The young are born after a 28-to-30-day gestation period, in April or May (Hoogland 2003, p. 236). Litters range in size from one to seven pups; mean litter size is 3.88 pups; litter sizes vary directly with maternal body mass (Mackley 1988, pp. 8–9; Hoogland 2001, p. 923). Young prairie dogs depend almost entirely on nursing while in their burrow (Hoogland 2003, p. 236). The young emerge above ground by early to mid-June, and by that time they primarily forage on their own (Hoogland 2003, p. 236). Because of the relatively large litter sizes, the observed summer population numbers of prairie dogs are much greater than the number of animals seen above ground in the spring.

Prairie dog pups attain adult size by October and reach sexual maturity at the age of 1 year (Wright-Smith 1978, p. 9). Less than 50 percent of Utah prairie dogs survive to breeding age (Hoogland 2001, p. 919). Male Utah prairie dogs frequently cannibalize juveniles, which may eliminate 20 percent of the litter (Hoogland 2003, p. 238). After the first year, female survivorship is higher than male survivorship, though still low for both sexes. Only about 20 percent of females and less than 10 percent of males survive to age 4 (Hoogland 2001, Figures 1 and 2, pp. 919–920). Utah prairie dogs rarely live beyond 5 years of age (Hoogland 2001, p. 919). The sex ratio of juveniles at birth is 1:1, but the adult sex ratio is skewed towards females, with adult female: Adult male sex ratios varying from 1.8:1 (Mackley 1988, pp. 1, 6–7) to 2:1 (Wright-Smith 1978, p. 8)

Natal dispersal (movement of first-year animals away from their area of birth) and breeding dispersal (movement of a sexually mature individual away from the areas where it copulated) are comprised mostly of male prairie dogs. Thus, individual male prairie dogs have a high mortality rate through predation. Young male Utah prairie dogs disperse in the late summer, with average dispersal events of 0.56 kilometers (km) (0.35 mile (mi)) and long distance dispersal events of up to 1.7 km (1.1 mi) (Mackley 1988, p. 10). Most dispersers move to adjacent territories (Hoogland 2003, p. 239).

Utah prairie dogs are organized into social groups called clans, consisting of an adult male, several adult females, and their offspring (Wright-Smith 1978, p. 38; Hoogland 2001, p. 918). Clans maintain geographic territorial boundaries, which only the young regularly cross, although all animals use common feeding grounds.

Major predators include coyotes (*Canis latrans*), badgers (*Taxidea taxis*), long-tailed weasels (*Mustela frenata*), various raptor species (*Buteo* spp., *Aquila chrysaetos*), and snakes (*Crotalus spp., Pituophus spp.*) (Hoogland 2001, p. 922). In established colonies, predators probably do not exert a controlling influence on numbers of prairie dogs (Collier and Spillett 1972, p. 36).

*Habitat Requirements and Food Habits*

Utah prairie dogs occur in semiarid shrub-steppe and grassland habitats (McDonald 1993, p. 4; Roberts *et al.* 2000, p. 2; Bonzo and Day 2003, p. 1). Within these habitats, they prefer swale-type formations where moist herbaceous vegetation is available (Collier 1975, p. 43; Crocker-Bedford and Spillett 1981, p. 24). Plentiful high-quality food found in swales enables prairie dogs to attain a large body mass, thus enhancing survival and increasing litter sizes and juvenile growth rates (Hoogland 2001, p. 923).

Soil characteristics are an important factor in the location of Utah prairie dog colonies (Collier 1975, p. 53). A well-drained area is necessary for home burrows. The soil should be deep enough to allow burrowing to depths sufficient to provide protection from predators and insulation from environmental and temperature extremes. Prairie dogs must be able to inhabit a burrow system 1 meter (m) (3.3 feet (ft)) underground without becoming wet.

Prairie dogs are predominantly herbivores, though they also eat insects (Crocker-Bedford and Spillett 1981, p. 8; Hoogland 2003, p. 238). Grasses are the staple of their annual diet (Crocker-Bedford and Spillett 1981, p. 8; Hasenyager 1984, p. 27), but other plants are selected during different times of the year. Utah prairie dogs only select shrubs when they are in flower, and then only eat the flowers (Crocker-Bedford and Spillet 1981, p. 8). Forbs are consumed in the spring. Forbs also may be crucial for the survival of prairie dogs during drought (Collier 1975, p. 48).

Utah prairie dogs prefer areas with deep, productive soils. These are the same areas preferred by agricultural producers. Agricultural tilling practices create unusually deep, soft soils optimum for burrowing; irrigation increases vegetative productivity; and plantings of favored moist forb species (such as alfalfa) likely make these areas more productive than they were historically (Collier 1975, pp. 42–43). Additionally, Utah prairie dogs grow faster and attain larger body weights (Crocker-Bedford and Spillett 1981, p. 1), and thus have higher overwinter survival, in alfalfa crops versus native habitats (Crocker-Bedford and Spillett 1981, p. 16). Reproduction and weaning of young also may be more successful in agricultural areas that provide abundant forage resources that are otherwise unavailable in drier native habitats (Crocker-Bedford and Spillett 1981, p. 17). Similarly, colonies in agricultural areas expand more rapidly than those in native habitats (Crocker-Bedford and Spillett 1981, p. 16). Finally, predator mortality is generally low for Utah prairie dogs in agricultural fields (see Life History), because farmers control badgers and coyotes in these areas (Crocker-Bedford and Spillett 1981, p. 17).

While we believe that the valley bottoms have probably always supported more prairie dogs than surrounding drier sites, it is likely that the high densities and abundances occurring in these areas are unnaturally augmented by today's agricultural practices (Collier 1975, pp. 43, 53; Crocker-Bedford and Spillett 1981, pp. 15–17, 22).

Overall, agricultural lands can provide valuable habitats for Utah prairie dogs. However, if the prairie dog populations become too dense, these same areas may be more prone to outbreaks of plague, a nonnative disease that occurs across the entire range of the Utah prairie dog and can extirpate entire colonies (Cully 1989, p. 48; Cully 1993, p. 40; Biggins and Kosoy 2001, p. 62; Cully and Williams 2001, p. 895). The rate of the spread of plague is likely dependent in part on the density of the host (*e.g.,* Utah prairie dog) population (Rayor 1985, entire; Cully 1993, p. 43; Cully and Williams 2001, p. 899–901; Biggins *et al.* 2010, p. 18)—populations with higher densities likely have higher plague transmission rates and higher rates of epizootic (rapidly spreading die-off cycle) outbreaks. Thus, we conclude that, if left unmanaged, the unnaturally high densities of Utah prairie dogs on some agricultural lands increase their susceptibility to plague outbreaks.

*Distribution and Abundance*

The Utah prairie dog is the westernmost member of the genus Cynomys. Historically, the species' distribution extended much further north than it does today (Collier 1975, pp. 15–17; Pizzimenti and Collier 1975, p. 1). Utah prairie dog populations declined dramatically when control programs to eradicate the species were initiated in the 1920s. The actual numeric population reduction is not known, because historical population figures were not scientifically derived (Collier and Spillett 1973, pp. 83–84). However, poisoning is estimated to have removed prairie dogs from approximately 8,094 hectares (ha) (20,000 acres (ac)) of their range prior to 1963 (Collier and Spillett 1972, pp. 33–35). Other factors that resulted in the historical decline of Utah prairie dogs were drought, habitat alteration from conversion of lands to agricultural crops, unregulated shooting, and disease (Collier and Spillett 1972, pp. 32–35).

The species' range is now limited to the southwestern quarter of Utah in Iron, Beaver, Garfield, Wayne, Piute, Sevier, and Kane Counties. The Utah prairie dog has the most restricted range of the four prairie dog species in the United States.

The best available information concerning Utah prairie dog habitat and population trends comes from survey and mapping efforts conducted by the UDWR annually since 1976. These surveys (hereafter referred to as "counts" or "spring counts") count adult Utah prairie dogs on all known and accessible colonies annually, in April and May, after the adults have emerged, but before the young are above ground in June (see "Life History"). Some non-Federal lands with active Utah prairie dog colonies are not surveyed due to lack of access. However, we believe that over 90 percent of prairie dog colonies are known and annually surveyed (Brown, pers. comm., 2010). Therefore, actual rangewide prairie dog numbers may be somewhat higher than reported, though probably not substantially higher.

Utah prairie dog surveys are completed in the spring ("spring counts") by visually scanning each colony area and counting the numbers of prairie dogs observed. Only 40 to 60 percent of Utah prairie dogs are above ground at any one time (Crocker-Bedford 1975 in USFWS 1991, p. 5). Therefore, spring counts represent approximately 50 percent of the adult population. Total population estimates are larger than the estimated adult population because they include reproduction and juveniles. Based on the male to female ratio, number of breeding females, average litter size, and observed spring count versus spring population (see the "Life History" section; Wright-Smith 1978, p. 8; Mackley 1988, pp. 1, 6–9; Hoogland 2001, pp. 919–920; 923), the total population estimate can thus be calculated from spring counts as follows: [(2 × spring adult count) × 0.67 (proportion of adult females) × 0.97 (proportion of breeding females) × 4 (average number of young per breeding female)] plus (2 × spring adult count). Thus, the total population estimate is about 7.2 × the spring count.

It should be noted that spring count surveys and population estimates are not censuses. Rather, they are designed to monitor population trends over time. Based on the spring counts, rangewide population trends for the Utah prairie dog are stable to increasing over the last 30 years (see Figure 1).

In addition to population trend information, the UDWR surveys provide information on the amount of mapped and occupied habitat across the species' range. We define mapped habitat as all areas within the species' range that were identified and delineated as being occupied by Utah prairie dogs in any year since 1972. These areas may or may not be occupied by prairie dogs in any given year. The database of all mapped habitat is maintained by the UDWR and updated annually. Occupied habitats are defined as areas that support Utah prairie dogs (*i.e.,* where prairie dogs are seen or heard or where active burrows or other signs are found).

The UDWR has mapped 24,142 ha (59,656 ac) of habitat rangewide (UDWR 2010a, entire). The Utah prairie dog occurs in three geographically identifiable areas within southwestern Utah, which are identified as recovery areas in our 1991 Recovery Plan (USFWS 1991, pp. 5–6) and as recovery units in our 2010 Draft Revised Recovery Plan (USFWS 2010, pp. 1.3.3, 3.2–7, 3.2–8), including: (1) The Awapa Plateau; (2) the Paunsaugunt Plateau, and (3) the West Desert. The Awapa Plateau recovery unit encompasses portions of Piute, Garfield, Wayne, and Sevier Counties. The Paunsaugunt Plateau recovery unit is primarily in western Garfield County, with small areas in Iron and Kane Counties. The West Desert recovery unit is primarily in Iron County, but extends into southern Beaver County and northern Washington County. Table 1 provides information on each recovery unit, including average percentage of the rangewide population and average percentage of prairie dogs occurring on non-Federal land (averages for 2000 to 2009). Additional information on each recovery unit's distribution, abundance, and trends can be found in our 2010 Draft Revised Recovery Plan (USFWS 2010, section 1.3)

TABLE 1—POPULATION AND OCCUPANCY DATA FOR EACH RECOVERY UNIT

| | Average percentage of rangewide population | Average percentage of prairie dogs occurring on non-Federal land |
|---|---|---|
| Awapa Recovery Unit | 8.9 | 47.6 |
| Paunsaugunt Recovery Unit | 16.9 | 71.0 |
| West Desert Recovery Unit | 74.2 | 85.1 |

**Note:** Averages calculated from 2000 to 2009.
*Source:* UDWR 2009, 2010b.

**Application of the Prairie Dog Special Rule Through the Present**

As explained above in the "Special Rules Under ESA Section 4(d)" section, pursuant to section 4(d) of the ESA, the Secretary of the Interior may extend to a threatened species those protections provided to an endangered species as deemed necessary and advisable to provide for the conservation of the species. When the Utah prairie dog was reclassified from endangered to threatened status in 1984, we issued a special rule applying all of the ESA's prohibitions to the Utah prairie dog except for take occurring in specific delineated portions of the Cedar and Parowan Valleys in Iron County, Utah, when permitted by the UDWR and in accordance with the laws of the State of

Utah, provided that such take did not exceed 5,000 animals annually and that such take was confined to the period from June 1 to December 31 (49 FR 22330; see page 22334, May 29, 1984). The rule required quarterly reporting by UDWR and allowed us to immediately prohibit or restrict such taking as appropriate for the conservation of the species if we received substantive evidence that the allowed take was having an effect that was inconsistent with the conservation of the Utah prairie dog (49 FR 22330, May 29, 1984).

In 1991, we amended the special rule (56 FR 27438, June 14, 1991), expanding the authorized taking area to include all private land within the species' range, and raised the maximum allowable take to 6,000 animals annually (50 CFR 17.40(g)). The rule required UDWR to maintain records on permitted take and make them available to the Service upon request (50 CFR 17.40(g)). Under this rule, we retained the ability to immediately prohibit or restrict such take as appropriate for the conservation of the species if we received substantive evidence that the permitted take was having an effect that is inconsistent with the conservation of the species (50 CFR 17.40(g)).

Both rules (49 FR 22330, May 29, 1984; 56 FR 27438, June 14, 1991) were intended to relieve Utah prairie dog population pressures in overcrowded portions of the range that could not otherwise be relieved. The rules indicated that agricultural practices were making the habitat more productive than it was historically, thus allowing the prairie dog population to achieve unnaturally high densities. The resulting overpopulation pressures increase the risk of sylvatic plague (*Yersinia pestis*) outbreaks (see "Habitat Requirements and Food Habits," above; 49 FR 22333, May 29, 1984; 56 FR 27439–27440, June 14, 1991). The rules also concluded that removing individuals during summer when populations were highest would reduce competition in overpopulated areas and result in increased overwinter survival among remaining animals (49 FR 22334, page 22333, May 29, 1984; 56 FR 27439–27441, June 14, 1991).

Finally, these rules were necessary and advisable to address the growing conflicts between landowners and prairie dogs by providing for ecologically based population control that also alleviated some of the impacts to agricultural operations (49 FR 22330, May 29, 1984; 56 FR 22330, pages 27439–27440, June 14, 1991). The rules expressed concern that without control actions, these factors could have a substantially negative effect on populations and reverse the recovery progress made since listing (49 FR 22330, page 22333, May 29, 1984; 56 FR 27440, June 14, 1991). The 1991 rule referenced data that demonstrated that Utah prairie dog population levels in areas with controlled take under the 1984 special rule increased 88 percent during the first 4 years (1985–1989) of implementation (56 FR 27438, June 14, 1991; see page 27440).

In practice, the UDWR currently permits taking only by shooting or trapping on agricultural lands where prairie dogs are causing damage and limits the number of animals taken on an individual colony to no more than half of a colony's estimated productivity for that year. Over time, UDWR has permitted take averaging 5.7 percent of the total rangewide estimated population annually (range equals 1.8 to 12.9 percent); actual take has averaged 2.5 percent of the total rangewide estimated population (range equals 0.9 to 5.3 percent). Table 2 provides detailed information on permitted and reported take as a percent of the total rangewide population from 1985 to 2009 (UDWR 2010b, entire). Figure 1 illustrates annual rangewide population estimates from 1985 to 2009 with a population trend line. Throughout implementation of the current special rules (49 FR 22330, May 29, 1984; 56 FR 27438, June 14, 1991; 50 CFR 17.40(g)), both the rangewide population estimates and numbers of prairie dogs in individual colonies subject to control remain stable to increasing (Figure 1; Day, pers. comm., 2010).

TABLE 2—AMOUNT OF UTAH PRAIRIE DOG TAKE PERMITTED AND REPORTED UNDER THE ESA 4(d) RULE BY UDWR, 1985–2009 (UDWR 2010B)

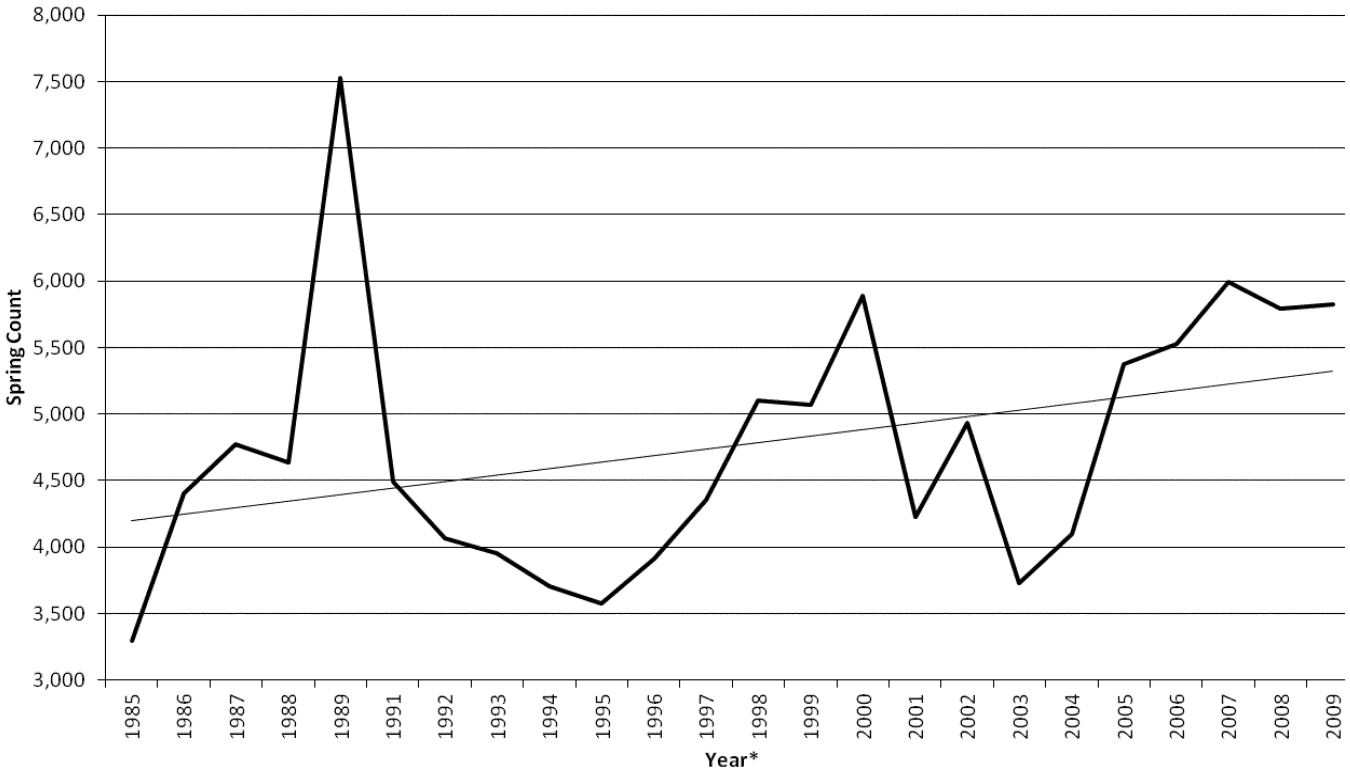
| Year * | Spring count | Rangewide population estimate | Permitted take | Permitted take percentage of rangewide population estimate | Reported take | Reported take percentage of rangewide population estimate |
|---|---|---|---|---|---|---|
| 1985 | 3,299 | 23,752 | 845 | 3.5 | 426 | 1.8 |
| 1986 | 4,400 | 31,680 | 2,040 | 6.4 | 1,247 | 3.9 |
| 1987 | 4,771 | 34,351 | 975 | 2.8 | 370 | 1.1 |
| 1988 | 4,640 | 33,408 | 2,415 | 7.2 | 528 | 1.6 |
| 1989 | 7,527 | 54,194 | 3,050 | 5.6 | 838 | 1.5 |
| 1991 | 4,492 | 32,342 | 4,200 | 12.9 | 1,632 | 5.0 |
| 1992 | 4,067 | 29,282 | 3,520 | 12.0 | 1,543 | 5.3 |
| 1993 | 3,954 | 28,469 | 1,050 | 3.7 | 599 | 2.1 |
| 1994 | 3,702 | 26,654 | 1,190 | 4.5 | 779 | 2.9 |
| 1995 | 3,576 | 25,747 | 630 | 2.4 | 461 | 1.8 |
| 1996 | 3,917 | 28,202 | 520 | 1.8 | 436 | 1.5 |
| 1997 | 4,359 | 31,385 | 1,065 | 3.4 | 589 | 1.9 |
| 1998 | 5,106 | 36,763 | 1,220 | 3.3 | 717 | 1.9 |
| 1999 | 5,068 | 36,490 | 2,496 | 6.8 | 1233 | 3.4 |
| 2000 | 5,892 | 42,422 | 3,700 | 8.7 | 1386 | 3.3 |
| 2001 | 4,223 | 30,406 | 3,719 | 12.2 | 1626 | 5.3 |
| 2002 | 4,933 | 35,518 | 3,781 | 10.6 | 1760 | 4.9 |
| 2003 | 3,729 | 26,849 | 2,620 | 9.8 | 1195 | 4.4 |
| 2004 | 4,102 | 29,534 | 1,360 | 4.6 | 363 | 1.2 |
| 2005 | 5,375 | 38,700 | 1,470 | 3.8 | 673 | 1.7 |
| 2006 | 5,524 | 39,773 | 1,060 | 2.7 | 343 | 0.9 |
| 2007 | 5,991 | 43,135 | 944 | 2.2 | 482 | 1.1 |
| 2008 | 5,791 | 41,695 | 1,204 | 2.9 | 561 | 1.3 |
| 2009 | 5,827 | 41,954 | 1,532 | 3.6 | 558 | 1.3 |

TABLE 2—AMOUNT OF UTAH PRAIRIE DOG TAKE PERMITTED AND REPORTED UNDER THE ESA 4(d) RULE BY UDWR, 1985–2009 (UDWR 2010B)—Continued

| Year * | Spring count | Rangewide population estimate | Permitted take | Permitted take percentage of rangewide population estimate | Reported take | Reported take percentage of rangewide population estimate |
|---|---|---|---|---|---|---|
| AVG | 4,761 | 34,279 | 1,942 | 5.7 | 848 | 2.5 |

* In 1990, colonies on private lands were not counted, due to staffing and budget limitations. Thus, these incomplete estimates are excluded from this table. In addition, take from 1985 to 1990 occurred only on non-Federal lands in Cedar and Parowan Valleys, Iron County. Take from 1991 to present was authorized on non-Federal lands rangewide.

**Figure 1. Utah Prairie Dog Spring Counts, with Rangewide Population Trend Line, 1985–2009 (UDWR 2010b).**




* Surveys from 1990 are not included, because they were incomplete (i.e., they did not include private lands), due to staffing and budget limitations.

**Proposed Amendments**

Based on new scientific information and 25 years of available data, we believe the existing 4(d) special rule should be amended. This proposed amendment includes limiting the direct take prohibitions authorized in 1984 and as amended in 1991, and provides additional incidental take authorization for otherwise legal activities associated with standard agricultural practices. The proposed amendments are largely consistent with the past practices and permitting as administered by UDWR under the current special rule. Utah prairie dog populations have remained stable to increasing throughout implementation of the current special rule as implemented under the UDWR permit system. Below we analyze both the new proposed restrictions on direct take and the new incidental take provision.

*Limiting Where Direct Take Can Be Permitted by the State*

The current special rule allows UDWR to permit take on private lands anywhere within the range of the Utah prairie dog. In practice, however, UDWR currently permits take only on agricultural lands where prairie dogs are causing damage. In this revision to the special rule, we propose to limit the locations where UDWR can permit take to agricultural lands and private property neighboring conservation properties.

The first situation where UDWR would be allowed to permit take is on agricultural land. This is consistent with current UDWR permitting procedures under the current special rule. However, our proposed revision would provide a specific definition for agricultural lands for clarification purposes. Specifically, this rule proposes that the above activities would be exempted from the take prohibition only on lands meeting the Utah Farmland Assessment Act of

1969 definition of agricultural lands (Utah Code Annotated Sections 59–2–501 through 59–2–515). Thus, to be considered agricultural land under this proposed amendment, lands must (1) meet the general classification of irrigated, dryland, grazing land, orchard or meadow; (2) be capable of producing crops or forage; (3) be at least 2 contiguous ha (5 contiguous ac) (smaller parcels may qualify where devoted to agriculture use in conjunction with other eligible acreage under identical legal ownership); (4) be managed in such a way that there is a reasonable expectation of profit; (5) have been devoted to agricultural use for at least 2 successive years immediately preceding the year in which application is made; and (6) meet State average annual (per-acre) production requirements. Limiting UDWR-permitted take to agricultural lands is consistent with the justification provided in the previous special rules for the species (as summarized above).

Additionally, agricultural operators must demonstrate to UDWR that their land is being physically or economically impacted by Utah prairie dogs. Before an application can be approved, UDWR must conduct a visual census of the applicant's property to verify that the land is being physically or economically impacted by Utah prairie dogs. The visual census will count prairie dogs on the applicant's property and determine a population estimate for the colony. A minimum spring count of five animals is required to ensure that permits are authorized only where resident prairie dogs have become established on agricultural lands (Day, pers. comm. 2011). Thus, lands being minimally impacted by dispersing prairie dogs would not be covered. These proposed restrictions are consistent with past UDWR practice. Utah prairie dog populations have remained stable to increasing throughout implementation of the current special rule and past practices, as implemented under the UDWR permit system. Therefore, consistent with past practice and data that indicate these restrictions will support the ongoing conservation of the species, we propose to adopt these restrictions.

The second situation where UDWR would be allowed to permit take is on private property within 0.8 km (0.5 mi) of Utah prairie dog conservation lands. Although the current special rule already allows for take in this situation, such take is not currently authorized by UDWR practices. However, we believe the continuation of this provision is important for Utah prairie dog recovery efforts. Permitting take by UDWR in this manner on private property near conservation lands promotes landowner and community support for Utah prairie dog recovery on non-Federal lands.

Conservation lands are areas set aside for the preservation of Utah prairie dogs and are managed specifically or primarily toward that purpose. Conservation lands may include, but are not limited to, non-Federal properties set aside as conservation banks, fee title purchased properties, properties under conservation easements, or properties subject to a safe harbor agreement. In order to be recognized as Utah prairie dog conservation land, the parcel must be accompanied by documentation that clearly defines the conservation benefits to the Utah prairie dog. In addition, documentation must be available describing the location of all neighboring private properties within 0.8 km (0.5 mi) of the conservation land parcel; the baseline populations of prairie dogs on the neighboring private properties (the highest estimated population size of the last 5 years prior to the establishment of the conservation property); and the methods of Utah prairie dog control that will be allowed on the neighboring private properties. The amount of UDWR-permitted take on properties that neighbor conservation lands, discussed further below, will be limited each year to the number of animals that exceed the baseline population size.

Continuing to allow permitted take on agricultural lands and lands bordering conservation lands is critical to facilitating the species' recovery. As previously described, Utah prairie dogs can reach unnaturally high densities and abundance on agricultural lands because of increased forage quantity and quality, and lower predator numbers (see "Habitat Requirements and Food Habits" section above). If prairie dog populations on agricultural lands are left uncontrolled, the consequent crowding may result in diminished forage resources, leading to decreased reproduction and survival or increased emigration (Crocker-Bedford and Spillett 1981, pp. 21–22; Reeve and Vosburgh 2006, pp. 122–123). Controlling populations by removing some prairie dogs decreases competition for limited food resources, consequently resulting in increased reproduction and decreased mortality (Reeve and Vosburgh 2006, p. 122).

Controlled removal also may help mediate the potential for plague outbreaks on prairie dog colonies. Plague is a nonnative disease that periodically erupts in epizootic events when increased population densities cause additional stress among individuals. High animal densities facilitate transmission of the disease between individuals (Cully 1989, p. 49; Anderson and Williams 1997, p. 730; Gage and Kosoy 2005, pp. 509 and 519–520).

Allowing control on agricultural lands will thus enhance the long-term conservation of the Utah prairie dog on these lands by maintaining more sustainable populations (*i.e.,* more natural animal densities are less likely to degrade their forage resources, and less likely to have large scale plague outbreaks). Utah prairie dog populations have remained stable to increasing under the current special rule since 1984.

We also have concluded that allowing some control of Utah prairie dogs will increase the participation of landowners and local communities in the species conservation and recovery. Until recently, Utah prairie dog recovery efforts focused on habitat enhancements and translocation of the animals to Federal lands (USFWS 1991, pp. 19–33). Consequently, recovery was largely dependent on achieving sufficient population numbers on Federal lands, without considering the potential for conservation benefits that could be achieved on private lands. We now have concluded that recovery will be achieved more rapidly if we increase conservation efforts on private and other non-Federal lands (where the majority of the species' occupied habitat occurs) (USFWS 2010, p. 2.3–2). We are in the process of revising the Recovery Plan to reflect this new direction (USFWS 2010, entire).

New or increased Federal regulations can be disincentives for recovery efforts. These disincentives may be nearly insurmountable for State, Tribal, and private landowners. Many agricultural producers claim that Utah prairie dogs impact their operations through loss of forage for their cattle; equipment damage from driving across burrows; livestock injury if animals step in burrows; and decreased crop yields (*e.g.,* prairie dogs eat crop vegetation such as alfalfa) (Elmore and Messmer 2006, p. 9). We expect that increased focus on establishing and managing non-Federal conservation lands will likely increase the size and extent of prairie dog colonies on and adjacent to these conservation lands. Thus, as recovery becomes more and more successful on non-Federal lands, regulatory relief will become increasingly important.

To achieve recovery, we will need to encourage private landowners and local communities to participate in prairie dog habitat improvement and protection measures. We can achieve this only if

we demonstrate that the benefits of prairie dog conservation outweigh the costs to the landowner, and if control programs or other damage compensation is available when needed (Elmore and Messmer 2006, p. 13). Some producers are interested in working with us on habitat and range improvement projects that benefit livestock and Utah prairie dogs simultaneously, or participating in conservation easements that benefit the species (Elmore and Messmer 2006, pp. 10–11, 13). However, agricultural producers want the ability to control or translocate prairie dogs to minimize levels of damage (Elmore and Messmer 2006, pp. 10, 13).

Our recent experiences show that if we are mindful of landowners' needs, and provide mechanisms to control Utah prairie dogs where they conflict with human land uses, we can gain landowner and local community support for species conservation. For example, in a 2005 safe harbor agreement, a landowner agreed to restore habitat and allow the establishment of a new colony of prairie dogs on his property through translocations (USFWS 2005, entire), but conditioned his willingness to accept translocated animals on the fact that his safe harbor agreement allowed him to control animals if they impacted his livestock operations (USFWS 2005, pp. 5–6). We have completed six similar Utah prairie dog safe harbor agreements, all of which include the ability for a landowner to control some prairie dogs where they may impact their agricultural activities.

Additionally, there may be opportunities to protect Utah prairie dogs and their habitats through fee-title purchase or conservation easements with willing landowners. We are more likely to gain community support for these land protection mechanisms if we can provide regulatory flexibility for neighboring landowners. For example, in 2001, the UDWR and Iron County purchased 73 ha (180 ac) in Parowan Valley, and renamed the area as the Parowan Valley Wildlife Management Area, designating it for the protection of a large Utah prairie dog colony. At the time, there was concern that neighboring landowners would be negatively impacted if prairie dog management activities resulted in the growth and expansion of the existing prairie dog colony. Therefore, to support the purchase and protection of this important colony, we worked with the landowner to allow the control of prairie dogs (above a 2001 baseline number on each property) for properties within 0.8 km (0.5 mi) of the Parowan Valley Wildlife Management Area. Because of the issuance of this permit, the local community supported the purchase and management of the property for conservation of the Utah prairie dog.

Another opportunity to promote the use of conservation easements is the Utah prairie dog habitat credit exchange program (hereafter referred to as the "credit exchange program") or similar conservation banking opportunities. The credit exchange program will allow a program administrator (in this case, the Panoramaland Resource Conservation and Development Council, Inc.) to enroll willing landowners in a Utah prairie dog conservation bank that is beneficial to landowners, developers, and prairie dogs. A pilot program implemented in 2010 will pay landowners to conserve Utah prairie dogs. Conservation on private lands can then be used to mitigate development in Utah prairie dog habitat. The credit exchange program, or other conservation banking opportunities, can help us promote mitigation in a way that provides a net benefit to the species by incorporating private lands and protecting prairie dogs on these lands with perpetual conservation easements (Environmental Defense 2009, p. 1). Again, we believe that we are more likely to gain community support for these land protection mechanisms if we can provide regulatory flexibility for neighboring landowners.

The protection of many conservation lands will occur as mitigation required under section 10(a)(1)(B) incidental take permits and habitat conservation plans (HCPs). The existing Iron County HCP allows the use of mitigation banks to offset the impacts of development to Utah prairie dogs (Iron County 2006). We are working with the counties and local communities to develop a rangewide HCP to replace the Iron County HCP. It is too early to describe specific mitigation scenarios under a new rangewide HCP, other than to summarize our intent that a new HCP contribute to recovery and simultaneously accommodate urban growth. Conservation banking agreements and conservation easements to conserve Utah prairie dog habitats on private or other non-Federal lands are likely tools that we will use under this new HCP. We believe that local support for any conservation lands set aside for the species in association with HCPs, especially in urban or agricultural areas, will be greatly enhanced by our ability to control the expansion of colonies or dispersal of individual prairie dogs onto neighboring lands.

Many of the enrolled conservation lands will likely be in or adjacent to agricultural production. The goal in establishing conservation lands is to increase prairie dog populations. As such, we believe there will be site-specific needs to control some animals adjacent to the enrolled conservation lands, on neighboring agricultural and other private properties. Our ability to provide sufficient control measures is essential if we are to gain increased interest on the part of private landowners and local communities in the long-term conservation of the Utah prairie dog.

Collectively, the available information indicates it would be prudent to limit where UDWR can permit take to (1) agricultural lands being physically or economically impacted by Utah prairie dogs when the spring count on the agricultural lands is five or more individuals and (2) private properties within 0.8 km (0.5 mi) of Utah prairie dog conservation land. Limiting the existing take authority to agricultural lands is consistent with UDWR permitting practices under the current special rule. It is in these areas that prairie dogs achieve population densities and abundances that are higher than their counterparts in native semiarid grassland communities. In addition, allowing take on private property near conservation lands would promote landowner and community support for Utah prairie dog that is necessary to achieve recovery on non-Federal lands. The ability to allow some control of prairie dogs is prudent from a biological and social context, and has and will continue to enhance our ability to recover the species. Utah prairie dog populations have remained stable to increasing throughout implementation of the current special rule and past practices, as implemented under the UDWR permit system.

*Limiting the Amount and Distribution of Direct Take That Can Be Permitted*

The current special rule allows UDWR to permit take for a maximum of 6,000 animals annually between June 1 and December 31, without additional restrictions as long as such take is not having an effect that is inconsistent with Utah prairie dog conservation. According to the literature, fixed harvest rates can lead to extirpation of prairie dog colonies, at least in the case of black-tailed prairie dogs (Reeve and Vosburgh 2006, pp. 123–125). This colony loss will occur more rapidly with larger fixed annual harvests (Reeve and Vosburgh 2006, pp. 123–125). From 1985 through 2009, the total estimated rangewide population (including juveniles) ranged from 23,752 to 54,194 animals (see Table 2). Thus, since 1991,

if UDWR had authorized the maximum amount of allowed take (6,000 animals), it would have represented 11 to 25 percent of the total estimated annual rangewide population (adults and juveniles). The UDWR has never authorized the current rule's maximum allowed take (6,000 animals). Actual reported take has always been considerably below the maximum allowance. Nevertheless, when considered alongside the specific existing data for the Utah prairie dog, the information from available literature that pertains to harvest of prairie dogs in general seems to indicate that additional safeguards would be prudent.

According to the literature, a harvest rate based on a percentage of the known population can help ensure maintenance of a sustainable population, with no risk of extinction (Reeve and Vosburgh 2006, p. 123). This rule proposes to maintain the current special rule's annual upper permitted take limit of 6,000 animals. However, this rule proposes to limit the maximum allowable total permitted take to no more than 10 percent of the estimated rangewide population annually. Take associated with agricultural lands could never exceed 7 percent of the estimated annual rangewide population. The remaining allowable take would be reserved for properties neighboring conservation lands.

In practice, UDWR implementation of the current special rule has followed a fluctuating harvest-rate model. Under the UDWR system, permitted take has averaged 5.7 percent of the total rangewide population estimate (range equals 1.8 to 12.9 percent), with actual take averaging 2.5 percent of the rangewide population (range equals 0.9 to 5.3 percent). With these levels of permitted and reported take, rangewide Utah prairie dog populations have, to date, remained stable to increasing (see Figure 1). While our proposed limit on allowable take is above the average actual take, UDWR-permitted take associated with agricultural lands has exceeded the proposed standard for agricultural lands (7 percent) seven times since 1985. Thus, this proposal would be more restrictive than past practice in some years and less restrictive than past practice in other years. On the whole, we believe the proposed limit on take would ensure that this rule does not negatively impact the stable-to-increasing Utah prairie dog population trends of the last 25 years. Continuing to allow sufficient take limits will help ensure that private landowners and local communities are willing to work with us on prairie dog conservation efforts.

Furthermore, the proposal would limit within-colony take on agricultural lands to not exceed one-half of a colony's estimated annual productivity (approximately 36 percent of the total estimated colony population). This limit is consistent with UDWR's past practice, which has successfully controlled prairie dogs in site-specific locations without negatively impacting recovery of the species (Day, pers. comm. 2010). In fact, since 1985 we have never verified the loss of a prairie dog colony because of take permitted by UDWR (Day, pers. comm. 2010). Furthermore, according to UDWR personnel, prairie dog counts have remained stable to increasing on sites where permits are repeatedly requested, indicating a self-sustaining population and, sometimes, the expansion of these colonies despite long-term control efforts (Day, pers. comm. 2010). Consequently, we believe the proposed actions are sufficient to address prairie dog control issues and Utah prairie dog recovery simultaneously.

Based on available models, we considered a more restrictive standard. The proposed standard equates to permitted take of up to 36 percent of the total estimated colony population. Modeling for black-tailed and Gunnison prairie dog colonies indicates that harvest rates of 25 percent and less than 20 percent, respectively, are sustainable (Reeve and Vosburgh 2006, p. 123; Colorado Division of Wildlife 2007, pp. 135–137). However, in our view, the Utah prairie dog situation differs from the ones modeled. One major difference is that prairie dog productivity and survivorship, key assumptions for these models, are substantially higher in colonies occurring on irrigated agricultural land than they are on native semiarid grasslands (Collier 1975, pp. 42–43, 53; Crocker-Bedford and Spillet 1981, p. 1, 15–17). These differences suggest that existing models for black-tailed and Gunnison prairie dogs are poor predictors of likely impacts to Utah prairie dogs. Thus, the suggested sustainable harvest rates recommended by these models are not directly applicable to agricultural lands occupied by Utah prairie dogs. Instead, we believe a more reliable indicator of likely future impacts is the 25 years of data from UDWR that indicate that this standard will provide for the conservation of the species (UDWR 2010b, entire). Utah prairie dog populations have remained stable to increasing throughout implementation of the current special rule and past practices, as implemented under the UDWR permit system. Thus, this rule's proposal to limit within-colony take on agricultural lands to not exceed one-half of a colony's estimated annual productivity (approximately 36 percent of the total estimated colony population) is consistent with UDWR's past practice.

We are requesting comments on this issue and may consider a stricter within-colony take limit in a final rule if available data indicate such restrictions would be necessary and advisable to provide for the conservation of the species. We plan to work with the UDWR to parse the available data to assist in further evaluating this issue in time for the final rule. We request data, analysis, or expert opinion which might assist in this evaluation.

As noted above, under this proposal, a maximum of 7 percent of the 10-percent take limit can be allocated to agricultural lands. The remaining take (3 percent or more, depending on the percent of take associated with agricultural lands) would be reserved for UDWR-permitted take on private property within 0.8 km (0.5 mi) of Utah prairie dog conservation lands. This level of take will allow us to address impacts to private lands associated with increased prairie dog distribution and numbers that is likely to result from the rangewide protection of conservation properties. Without such ability, private landowners and local governments would likely not support, and could prevent, much if not all recovery progress on private lands. We have determined that the ability to respond to this need, in a carefully regulated environment, is necessary and advisable for the conservation of the Utah prairie dog.

The extent of take on property adjacent to conservation lands would be further limited to not reduce populations below the baseline estimated total (summer) population size that existed on the adjacent lands prior to the establishment of the conservation property. This provision provides assurances to the landowners that they will not incur new Federal regulatory restrictions as a result of their habitat improvements and the reintroduction of prairie dogs on a conservation property. Conversely, this provision assists us with the creation of conservation properties by allowing landowners to take prairie dogs down to, but not below, the established baseline population—the property's baseline is the highest estimated population size on the property during the 5 years prior to establishment of the conservation property. Thus, this provision will provide a conservation

benefit for Utah prairie dogs by promoting landowner support for such efforts while not reducing populations below the established baseline. Similar provisions have been incorporated into all previously approved Utah prairie dog safe harbor agreements.

*Limiting Methods Allowed To Implement Direct Take*

The current special rule does not restrict the method or type of take UDWR can permit. In practice, UDWR has permitted the control of Utah prairie dogs through translocation efforts, trapping intended to lethally remove prairie dogs, and shooting. This proposal would limit methods of take that can be permitted to be consistent with this past practice.

Translocations of Utah prairie dogs are used to increase the numbers of prairie dog colonies in new locations across the species' range. Translocation of Utah prairie dogs occurs within and between recovery units in part to address the species' limited levels of genetic diversity (USFWS 1991; Roberts *et al.* 2000). Translocation efforts include habitat enhancement at selected translocation sites and live trapping of Utah prairie dogs from existing colonies to move them to the selected translocation sites. In short, translocations play an important role in establishing new colonies and facilitating gene flow.

Thus, translocation will be one of the approved methods of taking Utah prairie dogs. Currently, only UDWR performs Utah prairie dog translocations. This proposal would allow all properly trained and permitted individuals to translocate prairie dogs to new colony sites in support of recovery actions, provided these parties comply with current Service-approved guidance. Translocated prairie dogs count toward the take limits established by the existing special rule and will continue to count toward the more restricted take limits proposed in this rule. Translocation activities must comply with current Service approved guidelines (at present, the approved guidelines are the 2006 Recommended Translocation Procedures (USFWS 2010, appendix D)) in order for the provisions of this proposed rule to apply.

While translocation is and shall continue to be the preferred take option, largely due to its contribution to recovery, finite staff resources and a limited availability of suitable translocation sites require that other tools also be available. Thus, this proposal would limit methods of intentional lethal take to forms with a proven success record as demonstrated by past UDWR permitting, including lethal removal through trapping and shooting. Such UDWR-permitted controlled take can be carried out by the landowner or the U.S. Department of Agriculture—Wildlife Services with the landowner's permission. Use of these methods has occurred over the past 25 years, and rangewide population and individual colonies subject to take have remained stable to increasing (Day, pers. comm. 2010).

This rule proposes to specifically prohibit drowning and poisoning as methods of permissible lethal control. Drowning or poisoning are typically applied across large areas and usually kill large numbers of prairie dogs (Collier 1975, p. 55). These techniques have not been employed by UDWR under the existing rule and are explicitly prohibited by this proposal because they do not allow control agents to target a specific number of prairie dogs or track actual take.

Most studies on the impacts of shooting are related to recreational hunting on black-tailed prairie dog colonies. This information indicates that recreational shooting of other prairie dog species can cause localized effects on a population (Stockrahm 1979, pp. 80–84; Knowles 1988, p. 54; Vosburgh 1996, pp. 13, 15, 16, and 18; Vosburgh and Irby 1998, pp. 366–371; Pauli 2005, p. 1; Reeve and Vosburgh 2006, p. 144), but populations typically rebound thereafter (Knowles 1988, p. 54; Vosburgh 1996, pp. 16, 31; Dullum *et al.* 2005, p. 843; Pauli 2005, p. 17; Cully and Johnson 2006, pp. 6–7). Extirpations due to recreational shooting, while documented, are rare (Knowles 1988, p. 54).

Impacts to other species of prairie dog from unregulated or minimally regulated recreational shooting, as cited above, are likely to be more pronounced than impacts to Utah prairie dog UDWR-permitted control, given timing and take restrictions. In terms of timing, the existing special rule restricts UDWR-permitted taking to June 1 to December 31. Shooting from March to May would likely kill pregnant or lactating females so that neither they nor their offspring would reproduce the following year (Knowles 1988, p. 55). If the timing of shooting is restricted to times outside of the breeding and young-rearing (lactating) periods, then impacts can be minimized (Vosburgh and Irby 1998, p. 370; Colorado Division of Wildlife 2007, pp. 135–137). In fact, as described in this and previous rules (49 FR 22333, May 29, 1984; 56 FR 27439–27441, June 14, 1991), controlling prairie dogs when populations are at high densities (*i.e.,* particularly, during the summer months when the aboveground prairie dog population explodes as the juveniles emerge from their burrows) may enhance long-term population growth rates by reducing competition for limited resources and increasing overwinter survival (see "Limiting Where Direct Take Can Be Permitted"). This information is supported by observations that Utah prairie dog colonies are maintained at high levels on properties that have received multiple annual control permits despite over 25 years of permitted control under the current special rule (Day, pers. comm. 2010). According to the literature and on-the-ground experience with Utah prairie dogs, the current regulation regarding timing of permitted Utah prairie dog control, when combined with other take limitations outlined elsewhere in this rule (*e.g.,* a harvest rate based on a percentage of the known population and restrictions on lands where take is allowed), is sufficient to allow long-term stable-to-improving population trends to continue.

Another potential concern is lead poisoning as an indirect impact from shooting. Specifically, shooting may increase the potential for lead poisoning in predators and scavengers consuming shot prairie dogs (Reeve and Vosburgh 2006, p. 154). This risk may extend to prairie dogs, which have occasionally been observed scavenging carcasses (Hoogland 1995, p. 14). Expanding bullets leave an average of 228.4 milligrams (mg) (3.426 grains) of lead in a prairie dog carcass, while nonexpanding bullets averaged 19.8 mg (0.297 grains) of lead (Pauli and Buskirk 2007, p. 103). The amount of lead in a single prairie dog carcass shot with an expanding bullet is potentially sufficient to acutely poison scavengers or predators, and may provide an important portal for lead entering wildlife food chains (Pauli and Buskirk 2007, p. 103). A wide range of sublethal toxic effects is also possible from smaller quantities of lead (Pauli and Buskirk 2007, p. 103).

At the present time, we do not have information to indicate that these theoretical concerns are translating into impacts on Utah prairie dogs. UDWR-permitted take is limited to agricultural lands where prairie dogs are causing physical or economic damage, and private lands adjacent to conservation lands. Therefore, any potential site-specific impacts are limited in scope and likely of minor consequence to the Utah prairie dog. Limitations on the timing of allowed control further limit the scope of potential impacts. Our December 3, 2009, black-tailed prairie

dog status review came to a similar conclusion when it found use of expandable lead shot did not pose a substantial risk of lead poisoning to surviving prairie dogs due to scavenging carcasses (74 FR 63343).

Given these findings, this rule does not propose to prohibit certain types of shot (expandable vs. nonexpendable or lead vs. nonlead). However, we are accepting comments on this issue and may consider shot-type restrictions in a final rule if available data indicate such restrictions would be necessary and advisable to provide for the conservation of the species.

*Incidental Take From Normal Agricultural Practices*

Normal agricultural practices can result in the unlawful incidental take (harm, harass, or kill) of Utah prairie dogs. For example, agricultural equipment can accidentally crush burrows or individual animals. Similarly, burrows also can be flooded by normal irrigation practices and thus made uninhabitable for Utah prairie dogs, or result in incidental mortality. Although the incidental take permit for the Iron County HCP (Iron County 2006, entire) authorizes normal agricultural practices as a form of non-permanent take in Iron County, this incidental take permit does not extend to address these issues for agricultural users across the entire range of the Utah prairie dog.

This rule proposes to exempt incidental take resulting from agricultural practices on legitimately operating agricultural lands. Exempted practices would include plowing to depths not exceeding 46 centimeters (cm) (18 in.), discing, harrowing, irrigating crops, mowing, harvesting, and bailing, as long as the activities are not intended to eradicate Utah prairie dogs. These are traditional practices on this landscape.

While it is possible that some incidental mortality or harassment results from these activities, no available information indicates sizable or noteworthy impacts. Similarly, the available information (namely, annual Utah prairie dog surveys conducted by UDWR rangewide; see Distribution and Abundance, above) does not indicate impacts at the colony or species level. The continued presence of large, persistent colonies on agricultural lands despite ongoing agricultural uses indicates any negative impacts are minor and temporary. Agricultural operations make the land more productive than it would be in its natural state. Provided that careful regulation of direct take continues, this increased productivity appears, based on individual colony persistence and abundance data, to more than offset any temporary negative impacts that are created by the incidental take of individual prairie dogs.

Because such incidental take would not be limited in quantity, it is imperative we build in safeguards to prevent abuse. Therefore, this rule proposes that the above activities would be exempted from incidental take prohibitions on agricultural lands, only in accordance with the previously described Utah Farmland Assessment Act of 1969 (Utah Code Annotated Sections 59–2–501 through 59–2–515). To be considered agricultural land under this proposed rule, lands must meet the following requirements: They must meet the general classification of irrigated, dryland, grazing land, orchard, or meadow; must be capable of producing crops or forage; must be at least 2 contiguous ha (5 contiguous ac) (smaller parcels may qualify where devoted to agriculture use in conjunction with other eligible acreage under identical legal ownership); must be managed in such a way that there is a reasonable expectation of profit; must have been devoted to agricultural use for at least 2 successive years immediately preceding the year in which application is made; and must meet State average annual (per acre) production requirements.

Limiting the take to such lands ensures only legitimately operating agricultural producers will be able to apply the provisions in this proposed rule. As previously discussed, available information indicates that prairie dog populations on agricultural lands are not negatively affected by ongoing standard agricultural practices. In fact, 25 years of data under the current special rule show stable-to-increasing rangewide prairie dog population trends. Providing the safeguard of specifically defining agricultural lands ensures that we limit the allowable incidental take to specific types of agricultural uses, of which any possible resulting negative impact would be only a minor and temporary accompaniment to the continued long-term benefits to the species.

**Effects of These Proposed Rules**

The existing special rule (56 FR 27438, June 14, 1991; 50 CFR 17.40(g)) authorizes UDWR to permit take of up to 6,000 animals on private land within the species' range annually. This amendment proposes new restrictions on direct take previously authorized and proposes a new incidental take authorization. Table 3 illustrates the current regulatory restrictions alongside those proposed in this rule.

TABLE 3—COMPARISON OF CURRENT SPECIAL RULE, CURRENT PRACTICE, AND PROPOSED AMENDMENTS

| | Current rule and practice | Proposed amendments |
|---|---|---|
| **Where Direct Take Can Be Permitted**. | Private lands | Direct take permitted by the State would be limited to: Agricultural land being physically or economically impacted by Utah prairie dogs when the spring count on the agricultural lands is five or more individuals; and private properties within 0.8 km (0.5 mi) of Utah prairie dog conservation land. |
| **Amount of Rangewide Direct Take Allowed**. | 6,000 animals annually | The upper permitted take limit of 6,000 animals annually remains unchanged, but would be limited as follows: May not exceed 10 percent of the estimated rangewide population annually; and, on agricultural lands, may not exceed 7 percent of the estimated annual rangewide population annually. |
| **Site-Specific Limits on Amount of Direct Take**. | No restrictions specified | On agricultural lands, within-colony take would be limited to one-half of a colony's estimated annual production (approximately 36 percent of estimated total population). On properties neighboring conservation lands, take would be restricted to animals in excess of the baseline population. The baseline population is the highest estimated total (summer) population size on that property during the 5 years prior to establishment of the conservation property. |
| **Timing of Permitted Direct Take** | June 1 to December 31 | Unchanged. |

TABLE 3—COMPARISON OF CURRENT SPECIAL RULE, CURRENT PRACTICE, AND PROPOSED AMENDMENTS—Continued

| | Current rule and practice | Proposed amendments |
|---|---|---|
| **Methods Allowed to Implement Direct Take**. | No restrictions specified | Direct take would be limited to activities associated with translocation efforts by trained and permitted individuals complying with current Service-approved guidance, trapping intended to lethally remove prairie dogs, and shooting. Actions intended to drown or poison prairie dogs would be prohibited. |
| **Service Ability to Further Restrict Direct Take**. | The Service may immediately prohibit or restrict such taking as appropriate for the conservation of the species. | Unchanged. |
| **Incidental Take** | Not authorized | Utah prairie dogs may be taken when take is incidental to otherwise legal activities associated with standard agricultural practices (see rule for specifics). |

First, this proposal would restrict where direct take can be permitted by the UDWR to: (1) Agricultural land being physically or economically impacted by Utah prairie dogs when the spring count on the agricultural lands is five or more individuals; and (2) on private property within 0.8 km (0.5 mi) of Utah prairie dog conservation land.

Second, this proposal would limit the amount and distribution of direct take that can be permitted by UDWR. Total take would not exceed 10 percent of the estimated annual rangewide population, with an upper permitted take limit of 6,000 animals. On agricultural lands, permitted take would be limited to 7 percent of the estimated annual rangewide population and within colony take would be limited to one-half of a colony's estimated annual productivity. On properties neighboring conservation lands, the remaining take (3 percent of the estimated annual rangewide population or more, depending on the amount permitted on agricultural lands) would be restricted to animals in excess of the baseline population.

Third, this proposal would limit methods of take that can be permitted by the UDWR to include: (1) Activities associated with translocation efforts by trained and permitted individuals complying with current Service-approved guidance; (2) trapping intended to lethally remove prairie dogs; and (3) shooting. Regarding shooting, we are accepting comments on whether to limit the type of shot allowed.

These limitations on direct take are largely consistent with past UDWR practice. Slight modifications are proposed where implementation data indicate modifications are warranted.

Additionally, this proposal would exempt standard agricultural practices from incidental take prohibitions on private property meeting the Utah Farmland Assessment Act of 1969 (Utah Code Annotated Sections 59–2–501 through 59–2–515) definition of agricultural lands. These mortalities are in addition to the direct or intentional take described above. Allowable practices would include plowing to depths that do not exceed 46 cm (18 in.), discing, harrowing, irrigating crops, mowing, harvesting, and bailing, as long as the activities are not intended to eradicate Utah prairie dogs.

Finally, the Service maintains the right, as laid out under the existing special rule, to immediately prohibit or restrict UDWR-permitted taking. Restrictions on permitted taking could be implemented without additional rulemaking, as appropriate for the conservation of the species, if we receive evidence that taking pursuant to the special rule is having an effect that is inconsistent with the conservation of the Utah prairie dog.

These proposed new restrictions on direct take and the proposed new incidental take provision will support the conservation of the species while still providing relief and conservation incentives to private landowners. On the whole, we believe the proposed rule, if finalized, would help maintain the stable-to-increasing (more likely increasing) long-term population trends we have seen over the last 25 years, and facilitate the recovery of the Utah prairie dog.

## Required Determinations

### *Regulatory Planning and Review*

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government;

(b) Whether the rule will create inconsistencies with other Federal agencies' actions;

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; or

(d) Whether the rule raises novel legal or policy issues.

### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). Based on the information that is available to us at this time, we certify that this regulation will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

Utah prairie dogs have been Federally listed under the ESA since the early 1970s (38 FR 14678, June 4, 1973; 39 FR 1158, January 4, 1974). A 4(d) special rule has been in place since 1984 that provides protections deemed necessary

and advisable to provide for the conservation of the species (49 FR 22330, May 29, 1984; 56 FR 27438, June 14, 1991). These special regulations allow limited take of Utah prairie dogs on private land from June 1 through December 31, as permitted by UDWR (50 CFR 17.40(g)). While this proposed rule places limits on the current special rule, the proposed changes are largely consistent with current UDWR permitting practices. Because this proposal largely institutionalizes current practices, there should be little or no increased costs associated with this proposed regulation compared to the past similar special rules that were in effect for the last several decades.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that if promulgated, the proposed amendment would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) If adopted, this proposal will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or [T]ribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

This proposed rule would not impose a legally binding duty on non-Federal Government entities or private parties. Instead, this proposed amendment to the existing special rule proposes to establish take authorizations and limitations deemed necessary and advisable to provide for the conservation of the Utah prairie dog. Application of the provisions within this proposed rule, as limited by existing regulations and this proposed amendment, is optional.

(b) We do not believe that this rule would significantly or uniquely affect small governments. The State of Utah originally requested measures such as this proposed regulation to assist with reducing conflicts between Utah prairie dogs and local landowners on agricultural lands (49 FR 22331, May 29, 1984). In addition, the UDWR actively assists with implementation of the current special rule, and would do the same under this proposed regulation, through a permitting system. Thus, no intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. The special rule operates to maintain the existing relationship between the States and the Federal government. Furthermore, the proposed limitations on where permitted take can occur, the amount of take that can be permitted, and methods of take that can be permitted, are largely consistent with current UDWR practices. Therefore, the rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

*Takings*

This action is exempt from the requirements of E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights). According to section VI (D) (3) of the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, regulations allowing the take of wildlife issued under the ESA fall under a categorical exemption. This proposed amendment pertains to regulation of take (defined by the ESA as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct") deemed necessary and advisable to provide for the conservation of the Utah prairie dog. Thus, this exemption applies to this action.

Regardless, we do not believe this action would pose significant takings implications. This rule will substantially advance a legitimate government interest (conservation and recovery of listed species). However, it will not deny property owners economically viable use of their land, and will not present a bar to all reasonable and expected beneficial use of private property. We believe the existing special regulation and the proposed amendments provide substantial flexibility to our partners while still providing for the conservation of the Utah prairie dog. Should additional take provisions be required, an applicant has the option to develop a Habitat Conservation Plan and request an incidental take permit (see Section 10(a)(1)(B) of the ESA). This approach would allow permit holders to proceed with an activity that is legal in all other respects, but that results in the "incidental" take of a listed species.

We have concluded that this proposed action would not result in any takings of private property. Should any takings implications associated with the proposed amendment be realized, they will likely be insignificant.

*Federalism*

In accordance with E.O. 13132 (Federalism), this proposed rule would not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed amendment with, appropriate State resource agencies in Utah. The State of Utah originally requested measures such as this proposed regulation to assist with reducing conflicts between Utah prairie dogs and local landowners on agricultural lands (49 FR 22331, May 29, 1984). In addition, the UDWR actively assists with implementation of the current special rule, and would do the same under this proposed regulation, through a permitting system. Thus, no intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially directly affected. The special rule operates and, if amended, would continue to operate to maintain the existing relationship between the State and the Federal government. Therefore, this rule does not have significant

Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

*Civil Justice Reform*

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed this amendment to the existing special rule for the Utah prairie dog in accordance with the provisions of the ESA. Under section 4(d) of the ESA, the Secretary may extend to a threatened species those protections provided to an endangered species as deemed necessary and advisable to provide for the conservation of the species. The amendments proposed here satisfy this standard.

*Paperwork Reduction Act*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

In 1983, upon recommendation of the Council on Environmental Quality, the Service determined that National Environmental Policy Act (NEPA) documents need not be prepared in connection with regulations adopted pursuant to section 4(a) of the ESA. The Service subsequently expanded this determination to section 4(d) rules. A section 4(d) rule provides the appropriate and necessary prohibitions and authorizations for a species that has been determined to be threatened under section 4(a) of the ESA. It is our view that NEPA procedures unnecessarily overlay NEPA's own matrix upon the ESA section 4 decisionmaking process. For example, the opportunity for public comment—one of the goals of NEPA—is already provided through section 4 rulemaking procedures. This determination was upheld in *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* No. 04–04324 (N.D. Cal. 2005).

However, out of an abundance of caution, we intend to comply with the provisions of NEPA for this rulemaking. Thus, we are analyzing the impact of this proposed modification to the existing special rule and will determine if there are any new significant impacts or effects caused by this proposed rule. A draft environmental assessment will be prepared on this proposed action, and will be available for public inspection and comments when completed. All appropriate NEPA documents will be finalized before this rule is finalized.

*Clarity of This Proposed Rule*

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

(a) Be logically organized;

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

(c) Use clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

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

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. Therefore, we intend to coordinate with affected Tribes within the range of the Utah prairie dog. We will fully consider all of the comments on the proposed special regulations that are submitted by Tribes and Tribal members during the public comment period, and we will attempt to address those concerns, new data, and new information where appropriate.

*Energy Supply, Distribution, or Use*

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect this action to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

**References Cited**

A complete list of all references cited in this rulemaking is available upon request from our Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

For the reasons stated in the preamble, the Service proposes to amend part 17, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.40 by revising paragraphs (g)(1) and (g)(3) and adding paragraphs (g)(4) and (g)(5) to read as follows:

**§ 17.40 Special rules—mammals.**

* * * * *

(g) * * *

(1) Except as noted in paragraphs (g)(2) through (g)(4) of this section, all prohibitions of § 17.31(a) and (b) and exemptions of § 17.32 apply to the Utah prairie dog.

* * * * *

(3) *Direct or intentional take permitted by the Utah Division of Wildlife Resources.* Methods for

controlling Utah prairie dogs are limited to activities associated with translocation efforts by trained and permitted individuals complying with current Service-approved guidance, trapping intended for lethal removal, and shooting. Actions intended to drown or poison Utah prairie dogs are prohibited. Under the provisions of paragraph (g)(2) of this section and permitted by the Utah Division of Wildlife Resources, direct or intentional take is limited to agricultural land and private property near conservation land as follows:

(i) *Agricultural land.* (A) Take may be permitted only on agricultural land being physically or economically affected by Utah prairie dogs, and only when the spring count on the agricultural lands is five or more individuals; and

(B) The land must:

(*1*) Meet the general classification of irrigated, dryland, grazing land, orchard, or meadow;

(*2*) Be capable of producing crops or forage;

(*3*) Be at least 2 contiguous ha (5 contiguous ac) in area (smaller parcels may qualify where devoted to agricultural use in conjunction with other eligible acreage under identical legal ownership);

(*4*) Be managed in such a way that there is a reasonable expectation of profit;

(*5*) Have been devoted to agricultural use for at least 2 successive years immediately preceding the year in which application is made; and

(*6*) Meet State average annual (per-acre) production requirements.

(ii) *Private property near conservation land.* (A) Take may be permitted on private properties within 0.8 km (0.5 mi) of Utah prairie dog conservation land.

(B) Conservation lands are defined as non-Federal areas set aside for the preservation of Utah prairie dogs and are managed specifically or primarily toward that purpose. Conservation lands may include, but are not limited to, properties set aside as conservation banks, fee- title purchased properties, properties under conservation easements, and properties subject to a safe harbor agreement (see § 17.22.). Conservation lands do not include Federal lands.

(iii) *Permitted take on agricultural lands and private property near conservation land.* (A) The Utah Division of Wildlife Resources will ensure that permitted take does not exceed 10 percent of the estimated rangewide population annually.

(B) On agricultural lands, the Utah Division of Wildlife Resources will limit permitted take to 7 percent of the estimated annual rangewide population and will limit within-colony take to one-half of a colony's estimated annual production.

(C) In setting take limits on properties neighboring conservation lands, the Utah Division of Wildlife Resources will consider the amount of take that occurs on agricultural lands. The State will restrict the remaining permitted take (the amount that would bring the total take up to 10 percent of the estimated annual rangewide population) on properties neighboring conservation lands to animals in excess of the baseline population. The baseline population of neighboring lands is the highest estimated population on that property during the 5 years prior to establishment of the conservation property.

(D) Translocated Utah prairie dogs will count toward the take limits in paragraphs (g)(3)(iii)(B) and (g)(3)(iii)(C) of this section.

(4) *Incidental take.* Utah prairie dogs may be taken when take is incidental to otherwise-legal activities associated with standard agricultural practices on agricultural lands. These mortalities are in addition to the direct or intentional take provisions in paragraphs (g)(2) and (g)(3) of this section. Acceptable practices include plowing to depths that do not exceed 46 cm (18 in.), discing, harrowing, irrigating crops, mowing, harvesting, and bailing, as long as the activities are not intended to eradicate Utah prairie dogs.

(5) If the Service receives evidence that take pursuant to paragraphs (g)(2) through (g)(4) of this section is having an effect that is inconsistent with the conservation of the Utah prairie dog, the Service may immediately prohibit or restrict such take as appropriate for the conservation of the species.

* * * * *

Dated: May 18, 2011.

**Jane Lyder,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2011–13684 Filed 6–1–11; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R3–ES–2011–0028; MO 92210–0–0008]**

## Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Golden-Winged Warbler 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 golden-winged warbler (*Vermivora chrysoptera*) 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 or commercial information indicating that listing the golden-winged warbler may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the golden-winged warbler is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before August 1, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date. After August 1, 2011, you must submit information directly to the Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might 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.* In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is FWS–R3–ES–2011–0028. Check the box that reads "Open for Comment/Submission," and then click the Search

button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

*U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R3–ES–2011–0028; 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 we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, Wisconsin Ecological Services Office, U.S. Fish and Wildlife Office, 2661 Scott Tower Drive, New Franken, WI 54229–9565; by telephone (920–866–1725); or by facsimile (920–866–1710). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted under section 4(b)(3)(B) of the Act, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on golden-winged warbler (*Vermivora chrysoptera*) from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy, such as information related to the hybridization between the golden-winged warbler and the blue-winged warbler (*Vermivora cyanoptera*);

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

If, after the status review, we determine that listing the golden-winged warbler is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the golden-winged warbler, we request data and information on:

(1) What may constitute "physical or biological features essential to the conservation of the species";

(2) Where such physical and biological features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on "specific areas outside the geographical area occupied by the species" that are "essential to the conservation of the species." Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) 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 is available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the Wisconsin Ecological Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) 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 conduct a species status review, which we subsequently summarize in our 12-month finding.

### *Petition History*

On February 10, 2010, we received a petition, from Anna Sewell, requesting the golden-winged warbler be listed as endangered or threatened under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In an April 16, 2010, letter to the petitioner Anna Sewell, we responded that we had reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7)

of the Act was not warranted. This finding addresses the petition.

*Previous Federal Action(s)*

To date, no Federal actions have been taken with regard to the golden-winged warbler.

*Species Information*

The golden-winged warbler (*Vermivora chrysoptera*) is a neotropical migrant (breeding in North America and wintering in Central and South America) belonging to the Order Passeriformes and Family Parulidae (Sibley 2003, p. 429). It is classified as a discrete species by the American Ornithologists' Union (AOU 1998, p. 534). The golden-winged warbler is a small-sized passerine, weighing only 8.8 grams (g) (0.31 ounces (oz)). Total body length is 120.65 millimeters (mm) (4.75 inches (in)), with a wingspan of 190.5 mm (7.5 in). Diagnostic features include slate gray plumage on the chest, breast, nape and mantle, with contrasting yellow patches on the upper wing coverts (sets of small feathers that cover the upper wing area) and crown. An adult male in breeding plumage expresses a black throat patch and auriculars (groups of feathers that cover the sides of a bird's head where the bird's ear openings are located), with contrasting white supercilium (a plumage feature on the head) and malar region (around the cheeks). All of those features are less distinct in females. Both sexes can show a yellow wash on the mantle extending to secondary coverts (Confer 1992, not paginated; Sibley 2003, p. 429).

Golden-winged warblers breed across the north-central and eastern United States, expanding into southeastern Canada. The breeding range can be thought of as two distinct areas: The northern portion, which extends into southern Canada (southwestern Quebec, Ontario, Manitoba, and eastern Saskatchewan) and spreads south into Minnesota, Wisconsin, and Michigan, and the eastern portion, which includes parts of the Appalachians (Georgia, North Carolina, and Tennessee) and into Kentucky, Virginia, West Virginia, Pennsylvania, and New York, with low numbers in Connecticut, Vermont, and New Hampshire (InfoNatura 2007; Buehler *et al.* 2010, p. 8, 31). Breeding locations between the two distinct areas (Indiana, Ohio, and Illinois, and western New York) hold low numbers of birds (Sauer *et al.* 2008, not paginated; Buehler *et al.* 2006, not paginated). The northern and eastern breeding ranges are linked by a narrow corridor located in the St. Lawrence River Valley in north central New York (Buehler *et al.* 2010, p. 8). Wintering locations include areas in southern Central America and northern South America (Buehler *et al.* 2006, not paginated).

For breeding sites, the golden-winged warbler depends mostly on early successional habitats. These are habitats that have previously undergone an amount of disturbance by a natural or human-caused event that creates a structurally diverse landscape. These habitats can occur in upland or lowland areas (Buehler *et al.* 2010, p. 2). Landscapes that consist of forest edge, shrubs, forests with open canopy, habitats with grassy openings, and wetlands with scattered trees can be viable nesting habitats (Rossell *et al.* 2003, p. 1099; Buehler *et al.* 2010, p. 10). Breeding sites have been documented in abandoned farmlands, powerline cuts, recently logged sites, and locations along stream borders (Confer 1992, not paginated; Service 2009, not paginated). Habitat tracts of 10–50 hectares (ha) (24–37 acres (ac)) can support several pairs and are preferred over both smaller and larger areas (Confer 1992, not paginated). Nest success measures vary throughout breeding range and within the breeding season; however, rough estimates are between 40 percent at sites in New York to approximately 75 percent at sites in North Carolina (Buehler *et al.* 2007, p. 1440; Buehler *et al.* 2010, p. 20–21). Population estimates are approximately 210,000 individuals globally (Partners in Flight PIF Landbird Database).

The diet of the golden-winged warbler consists of small bugs, larvae, and spiders (Service 2009, not paginated). Golden-winged warblers can lay three to six eggs, in nests that are low to the ground and concealed by vegetation (Buehler *et al.* 2007, p. 1440).

**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.

In considering what factors constitute threats, 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, during the subsequent status review, we attempt to determine how significant a threat it is. The threat may be significant if it drives, or contributes to the risk of, extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined in the Act. The identification of factors that could impact a species negatively may not be sufficient to compel a finding that substantial information has been presented suggesting that listing may be warranted. The information should contain evidence or the reasonable extrapolation that any factor(s) 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.

In making this 90-day finding, we evaluated whether information regarding threats to the golden-winged warbler, as presented in the petition and 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.

*A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range.*

Information Provided in the Petition

The petition claims that threats causing the present or threatened destruction, modification, or curtailment of the golden-winged warbler's habitat or range include habitat loss and modification. The petition suggests that loss of early successional habitat has contributed to declining population trends throughout the species' range (Petition, p. 11; Hunter *et al.* 2001; NatureServ Explorer). Golden-winged warblers require early successional landscapes originating from natural or anthropogenic disturbance. Prior to European settlement, early successional landscapes occurred via stochastic events such as natural fires and storms, and through disturbances to landscapes from other species (for example, bison, elk, and beaver habitat modifications) (Petition, p. 11; Hamel *et al.* 2005). After European settlement in the

19th century, conversion of natural landscapes to agriculture resulted in the suppression of natural fires and a decrease in natural land disturbance. Golden-winged warblers shifted from using naturally created, early successional breeding habitat, to early successional habitat created by anthropogenic means (Petition, p. 12; Klaus and Buehler 2001). Within recent decades there has been a decrease in early successional habitat due to reforestation of the eastern United States, development, and changes in agricultural practices. The petition claims that the golden-winged warbler now breeds within a matrix of human-developed landscape (urban/suburban development, agriculture, and reforestation practices), thus leading to its decline in what was historically viable breeding habitat (Petition, p. 12; NatureServe2010).

The petition also claims that golden-winged warblers now rely on human interference to create early successional habitat that consists of shrubs, open canopy, habitats with forested edge, and/or grassy patches (Petition, p. 12; Klaus and Buehler 2001). The petition claims that in the United States, the decline in availability of habitat used by golden-winged warblers and other early successional habitat–dependent species (such as grassland birds) is increasingly becoming a concern (Petition, p. 13; Motzkin and Foster 2004). Although the petition (Petition, p. 14) states that habitat modification or loss is the primary obstacle for golden-winged warbler stabilization, Confer *et al.* (2003) state that other factors must be involved in population declines, because in areas where ample suitable habitat exists, such as in Massachusetts, the warblers have become extirpated;.

Evaluation of Information Provided in the Petition and Available in Service Files

Information provided by the petitioner and readily available in our files indicates the golden-winged warbler may be declining rangewide due to loss, degradation, and modification of early successional habitat. Forest maturation, land development, wetland destruction and loss, and lack of natural events that create viable breeding sites contribute to the reduction of available nesting habitat (Buehler *et al.* 2006, p. 1; Buehler *et al.* 2010, p. 118).

In the north-central breeding range, long-term trends (1966–2007) estimate populations to be decreasing by 1.4 percent per year (Sauer *et al.* 2008, not paginated). In this breeding region, Minnesota, Wisconsin, and Michigan together hold approximately 69 percent of the global breeding population of golden-winged warblers (Buehler *et al.* 2010, p. 31). Long-term trends (1966–2007) for Michigan estimate a population decline of 8.1 percent per year, with numbers relatively stable in Minnesota and Wisconsin. In the north-central breeding range, nests are found in wetland and upland shrub habitats consisting of old fields and pastures, clearcuts, and regenerating aspen tracts. The major threats to populations in the north-central breeding range include habitat loss, wetland drainage, and habitat succession (Buehler *et al.* 2010, p. 35).

In Canada (Manitoba, Ontario, Quebec, and Saskatchewan), long-term Breeding Bird Survey (BBS) data from 1966–2007 (Buehler *et al.* 2007, p. 144; Sauer *et al.* 2008, not paginated) indicate a relatively stable breeding population. This region supports approximately 18.2 percent of the global breeding population. Limited, short-term data collected over the last 10 years suggest a 4 percent per year population decline (Sauer *et al.* 2008, p. 1). More data are needed to accurately predict population trends for this region.

The Northeast supports 11 percent of the total global breeding population (Buehler *et al.* 2010, p. 74). In this breeding range, long-term trend information (1966–2007) from BBS data indicates an 8.8 percent per year decline in populations. More recent data from the past 25 years (1980–2007) estimate the same negative trend, at a loss of 6.2 percent per year (Sauer *et al.* 2008, p.1). Loss of early successional habitat and fragmentation of existing habitat contribute to the decline of populations in the Northeast region. Tens of millions of hectares of habitat has been lost as abandoned farmland passes through early successional to late successional stages (Confer *et al.* 2003, p. 142). This advancement in forest succession is taking place in many areas of the Northeast. Forest regeneration without regular natural disturbance, such as fire, results in dense canopy lacking open patches and low shrub layers. Landscapes with these characteristics are structurally different than forests that are regularly undergoing natural disturbance (Buehler *et al.* 2010, p. 118), and these dense forest habitats do not support golden-winged warblers. In the Northeast breeding range specifically, close associations with the blue-winged warbler (*Vermivora cyanoptera*) could also be contributing to the decline of golden-winged warblers. Breeding golden-winged warbler pairs in the Northeast overlap with blue-winged warbler breeding pairs, and these interactions can lead to golden-winged warblers either being pushed out of territories or to hybridization between the two species. More research is needed to understand if these interspecific interactions may be a threat to the golden-winged warbler (golden-winged and blue-winged warbler hybridization is discussed under factor E (Other natural or manmade factors affecting its continued existence).

In the southeastern breeding range, populations are too low to estimate decade-long trends; however, long-term trend information (1966–2007) from BBS data indicate a 7.3 percent decline per year (Sauer *et al.* 2008, p. 1). This region only supports 1.4 percent of the global breeding population (Buehler *et al.* 2010, p. 58). Research indicates that the decline of early successional habitat has led to the extirpation of golden-winged warblers in the southern districts of Cherokee National Forest, Tennessee (Klaus *et al.* 2005, p. 232). In areas of hardwood forests previously occupied by breeding pairs, early successional habitat has declined because of the occurrence of natural forest succession without the intervention of forest harvest or natural disturbance (Klaus *et al.* 2005, p. 232). Habitat loss may be the cause of population declines in the southeastern breeding range, because other potential threats such as blue-winged warbler interactions are not as common in this region.

Deforestation events have increased in golden-winged warbler wintering grounds, specifically the montane oak forests in Central and South America (Buehler *et al.* 2007, p. 4). The population dynamics of golden- and blue-winged warblers on wintering grounds lends support to the assertion that interspecific competition does not appear to be occurring in this region. Golden-winged warblers occupy areas that are further south and mostly separated from those of blue-winged warblers, with limited overlap occurring in northern Panama, Costa Rica, Honduras, Nicaragua, and Guatemala (Confer 1992, not paginated; Buehler *et al.* 2010, p. 120). Although it is unclear if the loss of overwintering habitat affects survival, overall golden-winged warbler population declines may be related. Potential threats to the species on wintering grounds need to be examined to determine if changes in wintering habitat are limiting to golden-winged warbler population viability.

The degradation of migratory stopover sites could impact fitness of individuals, or more directly cause mortality

(Buehler *et al.* 2010, p. 120). Other anthropogenic factors could impact individuals along migratory routes or at stopover sites. One report compiled data from 47 studies that monitored bird strikes at communication towers and found that golden-winged warbler mortality was identified at 15 towers, which accounted for 542 individuals (Shire *et al.* 2000, p.8).

BBS data indicate that the golden-winged warblers' breeding range has been shifting for the last 150 years and population numbers have declined (Confer *et al.* 2003, p. 142; Sauer *et al.* 2008, p. 1; Buehler *et al.* 2010, p. 24). Breeding populations in other States may become extirpated (Connecticut, South Carolina, Georgia, Indiana, Illinois, and Rhode Island) (Confer 1992, not paginated; Buehler *et al.* 2010, p. 25) and, already, the golden-winged warbler has not been verified to be breeding in Massachusetts (USGS North American Breeding Bird Atlas Explorer).

Golden-winged warblers require specific habitat characteristics found in early successional landscapes for nesting, and loss of this habitat may continue to reduce populations by limiting fecundity and, therefore, reproductive success, leading to population declines. In general, we expect golden-winged warbler populations to continue to decline, as a response to the reduction in breeding areas due to destruction, modification, and curtailment of early successional habitats. Loss of overwintering habitat and degradation of migratory stopover sites may also contribute to continuing population declines by reducing survival or reducing overall fitness, which can translate to reduced fecundity.

Summary of Factor A

In summary, the petition and information in our files identifies the loss of early successional habitat by changes in agricultural practices, forest maturation, land development, wetland destruction and loss, and lack of natural disturbance events as potential threats to the golden-winged warbler. Furthermore, winter habitat is affected by increasing deforestation and migrating individuals are impacted by the increasing number of communication towers. Therefore, we find that the information provided in the petition, as well as other information readily available in our files, presents substantial scientific or commercial information to indicate that the golden-winged warbler may warrant listing due to the present or threatened destruction, modification, or curtailment of the species' habitat or range.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.*

Information Provided in the Petition

The petition did not present any information with respect to Factor B.

Evaluation of Information Provided in the Petition and Available in Service Files

The information in our files does not indicate any threat to golden-winged warbler due to overutilization for commercial, recreational, scientific, or educational purposes. Therefore, we find that the petition and information readily available in our files does not provide substantial scientific or commercial information to indicate that the overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the golden-winged warbler such that the petitioned action may be warranted. However, we will further investigate the potential threat of overutilization for commercial, recreational, scientific, or educational purposes in our status review for this species.

*C. Disease or Predation*

Information Provided in the Petition

The petition did not present any information with respect to Factor C.

Evaluation of Information Provided in the Petition and Available in Service Files

Our files indicate that, although nest predation may be a leading cause of nest loss for golden-winged warblers, there is not enough data indicating that nest predation rates are limiting factors in population declines (Buehler *et al.* 2010, p. 125). Therefore, the information in our files does not indicate any threat to golden-winged warblers due to disease or predation. We find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that disease or predation may present a threat to the golden-winged warbler such that the petitioned action may be warranted. However, we will further investigate the potential threat of disease or predation in our status review for this species.

*D. The Inadequacy of Existing Regulatory Mechanisms*

Information Provided in the Petition

The petition claims that the only way to ensure protection for the golden-winged warbler is to mandate Federal protection across the species' entire North and South America range (Petition, pp. 22–23). The petition suggests that existing regulatory mechanisms do not adequately protect the golden-winged warbler. State regulations provide the species protection from only the sale or take of individuals; in addition, State regulations are insignificant because they protect the species at localized areas only, versus the entire range, and do not address habitat protection or conservation (Petition, pp. 16–23).

Evaluation of Information Provided in the Petition and Available in Service Files

In Canada, golden-winged warblers are protected under the Migratory Bird Convention Act of 1916 and by the Schedule One of Canada's Species at Risk Act. The Committee of the Status of Endangered Wildlife in Canada (COSEWIC) lists the bird as threatened in Quebec, Ontario, and Manitoba. In the United States, under the Migratory Bird Treaty Act of 1918, as amended, it is unlawful to take, capture, kill, or possess migratory birds, their nests, eggs, and young. These protections extend to the golden-winged warbler. The Service has identified the golden-winged warbler nationally as a Bird of Conservation Concern, which is a designation assigned to the species by the Division of Migratory Bird Management. This designation indicates that the species is one which, without additional conservation actions, is likely to become a candidate for listing under the Act.

The Service also identifies the species as a bird of management concern at the Bird Conservation Region (BCR) scale (developed by the North American Bird Conservation Initiative) in regions 12 (Boreal Hardwood Transition Zones), 13 (Lower Great Lakes/St. Lawrence Plain), 23 (Prairie Hardwood Transitions Zones), and 28 (Appalachian Mountains) (Service 2008, pp. 28, 29, 39, 44). Partners in Flight ranks the golden-winged warbler as a Watch List Species in need of immediate management action (Buehler *et al.* 2010, p. 127 cited from Rich *et al.* 2004). The golden-winged warbler is listed as a Species of Global Concern on the Audubon Society's species watch list (The National Audubon Society, not paginated). The International Union for Conservation of Nature (IUCN) lists golden-winged warblers as Near Threatened on their Global Continental Conservation Status list (BirdLife International 2008). These various classifications, however, are not regulatory in nature.

The golden-winged warbler is State-listed as threatened, endangered, or of special concern in some areas of its range. Regulatory protections for State-listed species vary by individual States, but in general, State-listed species do not receive the same level of protection, especially with regard to habitat loss, afforded to Federally listed species. The Service is leading a cooperative effort with Federal and State agencies, researchers, universities and other nongovernment organizations to determine the extent of threats to the golden-winged warbler population. Developed in 2003, the Golden Winged Warbler Working Group consists of Federal, State, and nonprofit entities. The Working Group prioritizes research and monitoring activities, investigates hybridization range and species genetics, develops habitat classification measures and management priorities, and works with the Natural Resource Conservation Service (NRCS, U.S. Department of Agriculture) to integrate species-specific management into legislation such as the Farm Bill (Buehler *et al.* 2007, p. 1442). The working group conducts a variety of conservation efforts and research throughout the species' range. These collaborative efforts were initiated separately from the petition for listing this species under the Act, and solely because of the interest of the cooperating organizations in improving the status of this species, which is widely recognized as a species of conservation concern.

Summary of Factor D

The petition and information in our files suggest that individual State-level protections are not adequately protecting the warbler, as evidenced by declining population trends in all breeding areas and declining habitat trends on the wintering grounds. In addition, the existing regulatory mechanisms do not provide habitat conservation or protection measures, nor do they directly address management incentives for the golden-winged warbler. The formation of the Golden Winged Warbler Working Group is leading the development of conservation initiatives; however, this group does not have authority to implement wide-scale population-level protection. Declining population trends in all breeding areas, as well as declining habitat trends on the wintering grounds of golden-winged warbler, continue, and existing legislation does not protect the golden-winged warbler or its habitat throughout the species' range. Therefore, we find that the information provided in the petition, as well as other information readily available in our files, presents substantial scientific or commercial information to indicate that the golden-winged warbler may warrant listing due to the inadequacy of existing regulatory mechanisms.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence.*

Interactions With Blue-Winged Warbler

Information Provided in the Petition

The petition claims that golden-winged warblers are being displaced by the expansion of blue-winged warblers, resulting in golden-winged warblers being pushed north into Ontario and west into Minnesota (Petition, p. 15; Hamel *et al.* 2005). The expansion of blue-winged warblers into golden-winged warblers' habitat may be correlated with loss of early successional habitat (Petition, p. 15; NatureServe 2010). The range of the golden-winged and blue-winged warblers overlap considerably, and data from one study found that golden-winged warblers nesting near blue-winged warblers laid fewer eggs (Petition, p. 15; Confer *et al.* 2003, p. 141).

Evaluation of Information Provided in the Petition and Available in Service Files

Data from the last 150 years document the replacement of golden-winged warblers with blue-winged warblers in areas of the Northeast (Buehler *et al.* 2010, p. 75). The expansion of blue-winged warblers may result in the displacement of golden-winged warblers, a decrease in productivity, or an increase in hybridization events (Confer *et al.* 2003, p. 141; Buehler *et al.* 2010, p. 121).

The golden-winged warbler is closely related to the blue-winged warbler, and interbreeding between the two species occurs, producing fertile young (Confer 1992, not paginated; Buehler *et al.* 2010, p. 5). The two hybrids that can result from the cross-mating of the two species are Brewster's warbler and Lawrence's warbler. The Brewster's warbler is a first-generation hybrid, meaning a cross between golden-winged and blue-winged parents. It holds the dominate traits of both parents (white ventral plumage of the golden-winged warbler but overall coloration of the blue-winged warbler). Brewster's hybrids can back-cross with golden-winged or blue-winged warblers to produce viable offspring (Gough and Sauer 1997, not paginated). The Lawrence's warbler is a cross between a Brewster's warbler and a golden-winged warbler, or a Brewster's warbler and a blue-winged warbler. The Lawrence's warbler displays the recessive traits (feather coloration of the golden-winged, with yellow plumage of the blue-winged) (Gough and Sauer 1997, not paginated; Buehler *et al.* 2010, p. 5).

The population-level impacts of interactions between golden-winged and blue-winged warblers, and variables contributing to hybridization events, are unclear. In two hybridization zones, nest success rates for the golden-winged warbler were lower in New York at sites that had documentation of species hybridization compared to sites in North Carolina that had no evidence of hybridization (Klaus and Buehler 2001, p. 300). This suggests that in areas where the two species occur together, reproductive efforts of golden-winged warblers may be suppressed due to hybridization. However, in New York there are areas of overlap where the two species are sympatric and co-exist without detected impacts to golden-winged warbler productivity (Confer and Larkin 1998, p. 213).

The degree of hybridization may vary within different geographic locations. For example, interspecific interactions between blue-winged and golden-winged warblers may be more pronounced in the northeastern United States, where populations overlap considerably (Buheler *et al.* 2010, p. 118). In upland areas of New York and Pennsylvania, golden-winged warblers might be limited by habitat loss in addition to blue-winged warbler hybridization, while populations in North Carolina may be limited only by habitat loss (Buehler *et al.* 2007, p. 1440). In some areas of the southeastern United States, the golden-winged warbler population has declined in the absence of blue-winged warblers (Buheler *et al.* 2010, p. 121). Therefore, other factors likely contribute to declines of golden-winged warbler populations in the southeastern breeding range.

More research is needed to fully understand the possible effects of hybridization on the golden-winged warbler. The information in the petition and in Service files provides limited data on golden-winged and blue-winged warbler interactions. We find the information provided in the petition discusses one possible threat, the possible reduction of golden-winged warbler productivity due to blue-winged warblers occupying golden-winged warbler breeding sites. Information in Service files indicates that interspecific interactions, such as species hybridization, may be a threat to the golden-winged warbler, especially in

specific geographic locations. Both the petition and Service files recognize that blue-winged warblers are expanding into golden-winged warblers' range and that this expansion could be correlated with the loss of early successional habitat. Although the effects of interspecific interactions (reduced breeding productivity or hybridization) between the blue-winged and golden-winged warbler remain unclear, we find that the information provided in the petition, as well as other information readily available in our files, presents substantial scientific or commercial information to indicate that the golden-winged warbler may warrant listing due to other natural or manmade factors affecting the species' continued existence due to these factors.

Brown-headed Cowbird Nest Parasitism

Information Provided in the Petition

The petition states that brown-headed cowbirds (*Molothrus ater*) are parasitizing golden-winged warbler nests, with evidence suggesting that the rate of parasitism reduces fledgling success (Petition, p. 15). The study cited in the petition was conducted in New York and found a 50 percent loss in fledgling success in nests with brown-headed cowbird eggs. However, the small sample size of nests (34 nonparasitized nests and 7 parasitized nests) may lead to statistical error (Confer *et al.* 2003, p. 141). This study found that fledgling rate in nonparasitized nests was high (68 percent), while fledgling rate in parasitized nests was low (32 percent), and that this difference is enough to warrant concern about brown-headed cowbird parasitism limiting golden-winged warbler fledgling success (Confer *et al.* 2003, p. 141). The petition concludes that nest parasitism, coupled with other factors, leads to reduced fledgling success (Petition, p. 15).

Evaluation of Information Provided in the Petition and Available in Service Files

The rate of cowbird parasitism varies within the range of golden-winged warblers. Golden-winged warbler nests, especially in agricultural landscapes, experience moderate rates of parasitism (Confer 1992, not paginated). In a sample size of nests found in the eastern United States, central Michigan, central New York, and eastern New Jersey, 11 of 113 nests were parasitized (Coker and Confer 1990, p. 551). In nests found in New York, from 1988 to 1994, 30 percent had at least one cowbird egg or chick, which reduced fledgling success by 17 percent (Confer *et al.* 2003, p. 138). Although brown-headed cowbirds were present, cowbird parasitism was not recorded in nests of golden-winged warblers in areas of Tennessee and North Carolina (Klaus and Buehler 2001, p. 29) and was not apparently impacting golden-winged populations in West Virginia or Ontario (Buehler *et al.* 2010, p. 23). At breeding sites in north central New York, cowbird parasitism was correlated with a reduction in incubated eggs and a reduction in the proportion of incubated eggs that hatched; however, parasitism did not significantly affect nestling success rate (Confer *et al.* 2003, p. 138).

Although there is evidence indicating golden-winged warblers are susceptible to brown-headed cowbird parasitism, it has not yet been determined if brown-headed cowbird parasitism has a substantial impact on golden-winged warbler nest success rates throughout the species' breeding range. Brown-headed cowbird parasitism may be a greater concern for warblers nesting in the northeast United States, compared to warblers in the north central breeding range.

We find that, based on information in the petition, as well as other information readily available in our files, we are unsure of the impact cowbird parasitism may have on the golden-winged warbler. However, we will further investigate the potential impacts of cowbird parasitism in our 12-month status review.

## Finding

On the basis of our analysis under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the golden-winged warbler throughout its entire range may be warranted. This finding is based on information provided under Factors A (present or threatened destruction, modification, or curtailment of the species' habitat or range), D (the inadequacy of existing regulatory mechanisms), and E (other natural or manmade factors affecting the species' continued existence). Specifically, we find that the following may pose threats to the golden-winged warbler throughout all or a significant portion of its range, such that the petitioned action may be warranted: Habitat modification and loss of early successional habitat (Factor A); inadequacy of existing regulatory mechanisms (because existing regulations only provide protection from the sale or take of individuals at localized areas, rather than the entire range, and do not address habitat protection or conservation) (Factor D); and interactions with blue-winged warblers (Factor E). We determine that the information provided under Factors B (overutilization for commercial, recreational, scientific or educational purposes) and C (disease or predation) is not substantial.

Because we have found that the petition presents substantial information indicating that listing the golden-winged warbler may be warranted, we are initiating a status review to determine whether listing the golden-winged warbler under the Act is warranted.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

## References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Wisconsin Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

## Author

The primary authors of this notice are the staff members of the Wisconsin Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 4, 2011.

**Rowan W. Gould,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2011–13731 Filed 6–1–11; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register
Vol. 76, No. 106
Thursday, June 2, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Formative Research for the Pilot of a Garden-Related Nutrition Curriculum

**AGENCY:** Food and Nutrition Service, Department of Agriculture.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection for Formative Research for the Pilot of a Garden-Related Nutrition Curriculum.

**DATES:** Written comments must be received on or before August 1, 2011.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Alicia White, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 632, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Alicia White at 703–305–2549 or via e-mail to *Alicia.White@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Alicia H. White, MS, RD, Senior Nutritionist, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture.

**SUPPLEMENTARY INFORMATION:**

*Title:* Formative Research for the Pilot of a Garden-Related Nutrition Curriculum.

*Form/OMB Control Number:* 0584–NEW.

*Expiration Date:* Not Yet Determined.

*Type of Request:* New Collection.

*Abstract:* As authorized under Section 6(a)(3) of the Richard B. Russell National School Lunch Act, 42 USC 1755(a)(3), the Department of Agriculture's Food and Nutrition Service (FNS) provides training and technical assistance for school foodservice, nutrition education for children and their caregivers, and encourages school and community support for healthy eating and physical activity. These activities are implemented under the Agency's Team Nutrition initiative that is designed to improve children's lifelong eating and physical activity habits by using the principles of the *Dietary Guidelines for Americans.*

Under the Team Nutrition initiative, FNS is developing garden-related nutrition education lessons that promote fruit and vegetable consumption while meeting education standards for academic course content for grades three and four. These lesson plans will fill a need for a national nutrition education curriculum that connects and reinforces farm-to-school, school garden, and school meal initiatives.

To ensure that the developed curriculum is easy-to-implement in the school environment and has the intended effect upon children's fruit and vegetable preferences, FNS plans to conduct formative piloting of the curriculum for 3rd and 4th grade students. The pilot will assess how the curriculum was implemented (process measures) by 3rd and 4th grade teachers and gather feedback from teachers and other relevant school staff regarding the curriculum implementation, including ease-of-use, clarity, lesson quality and feasibility, and perceived student and parent receptiveness. The pilot will also measure changes in students' nutrition and food systems (*i.e.,* how food is grown, where it comes from) knowledge and student preferences for and "willingness to taste" featured fruit and vegetables. Students' perceptions of the lesson activities shall also be evaluated. Information gathered from this research will inform curriculum revisions.

A longitudinal, repeated measure, pretest-posttest design with a combination of quantitative and qualitative methods will be used. Three intervention schools with pre-existing school gardens and one comparison school without a garden will be selected to participate. Within each intervention and comparison school, one 3rd grade classroom and one 4th grade classroom will be selected to participate for a total of six intervention and two comparison classrooms. Pre- and posttest questionnaires will be administered to students, teachers, parent/caregivers, and other staff, such as food service personnel and school administrators. Teachers will also be interviewed posttest and asked to maintain a log of curriculum activities.

*Affected Public (Individual/Households; State, Local and Tribal Government):* 3rd and 4th grade students, their teachers, their parents/caregivers of students, and school foodservice personnel of four schools.

*Estimated Number of Respondents:* The total estimated number of participants is 492. Representing 4 participating schools, this includes: 240 3rd and 4th grade students; 240 parents and caregivers); 8–3rd and 4th grade teachers; and 4 school foodservice managers/directors (one per school). It is anticipated that responders will include 85% of students (204), 30% of parents (72), 75% of teachers (6) and 75% of food service personnel (3).

*Estimated Number of Responses per Respondent:* Representing the three participating garden schools, all 3rd and

4th grade students will be asked to participate in a pre-intervention (pretest) survey, post-intervention (posttest) survey, and a student garden monitoring survey for a total of three responses each. Representing the one non-garden school, all 3rd and 4th grade students will be asked to participate in a pre-intervention (pretest) survey and a post-intervention (posttest) survey, for a total of two responses each. The 3rd and 4th grade classroom teachers will be asked to participate in one pre-intervention (pretest) survey, and one each at posttest, a survey, an interview, and a Curriculum Implementation Log, for a total of five responses each. The parents/caregivers will be asked to participate in one pre-intervention (pretest) survey, and one at posttest, for a total of two responses each. Finally, the school foodservice manager or director will be asked to participate in a posttest survey, for a total of one response each.

*Estimated Total Annual Responses:* 1,183.

*Estimated Time per Response:* The estimated time per response varies from 0.08 to 0.5 hr. depending on the respondent group and the instruments used, as shown in the table below.

*Estimated Total Annual Burden on Respondents:* 201.02 hr.

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Estimated Annual Reporting Burden:

| (a) Affected Public | RESPONDENT TYPE | (b) Survey Instruments | (c) No. Respondents | (d) Frequency of Responses | (e) [c x d = e] Est. Total Annual Responses per Respondent | (f) Hours Per Response | (g) [e x f = g] Total Burden Hours |
|---|---|---|---|---|---|---|---|
| Individuals & Households | **STUDENTS** | | **240** | | | | |
| | **GARDEN SCHOOLS** | | (180) | | | | |
| | *Responders (85%)* | *Pretest* | (153) | 1 | 153 | 0.25 | 38.25 |
| | | *Posttest* | (153) | 1 | 153 | 0.25 | 38.25 |
| | | *Garden Survey* | (153) | 1 | 153 | 0.17 | 26.01 |
| | *Non-Responders (15%)*[1] | *Pretest* | (27) | 1 | 27 | 0.00 | 0.00 |
| | | *Posttest* | (27) | 1 | 27 | 0.00 | 0.00 |
| | | *Garden Survey* | (27) | 1 | 27 | 0.00 | 0.00 |
| | **NON-GARDEN SCHOOLS** | | (60) | | | | |
| | *Responders (85%)* | *Pretest* | (50) | 1 | 50 | 0.25 | 12.5 |
| | | *Posttest* | (50) | 1 | 50 | 0.25 | 12.5 |
| | *Non-Responders (15%)*[1] | *Pretest* | (10) | 1 | 10 | 0.00 | 0.00 |
| | | *Posttest* | (10) | 1 | 10 | 0.00 | 0.00 |
| | | | | | | **SUBTOTAL** | **127.51** |
| | **PARENTS/CAREGIVERS (all schools)** | | **240** | | | | |
| | *Responders (30%)* | *Pretest* | (72) | 1 | 72 | 0.25 | 18.0 |
| | | *Posttest* | (72) | 1 | 72 | 0.25 | 18.0 |
| | *Non-Responders (70%)* | *Pretest* | (168) | 1 | 168 | 0.08 | 13.44 |
| | | *Posttest* | (168) | 1 | 168 | 0.08 | 13.44 |
| | | | | | | **SUBTOTAL** | **62.88** |
| State, Local/Tribal | **TEACHERS (all schools)** | | **8** | | | | |
| | *Responders* | *Pretest* | (6) | 1 | 6 | 0.25 | 1.50 |

[1] Student non-responders will be all students absent on the day the instrument is administered.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Employees | (75%) | Posttest | (6) | 1 | 6 | 0.25 | 1.50 |
| | | Interview | (6) | 1 | 6 | 0.50 | 3.00 |
| | | Implementation Log | (6) | 1 | 6 | 0.25 | 1.50 |
| | | Survey | (6) | 1 | 6 | 0.25 | 1.50 |
| | Non-Responders (25%) | Pretest | (2) | 1 | 2 | 0.08 | 0.16 |
| | | Posttest | (2) | 1 | 2 | 0.08 | 0.16 |
| | | Interview | (2) | 1 | 2 | 0.08 | 0.16 |
| | | Implementation Log | (2) | 1 | 2 | 0.08 | 0.16 |
| | | Survey | (1) | 1 | 1 | 0.08 | 0.16 |
| | | | | | | SUBTOTAL | 9.80 |
| | FOODSERVICE PERSONNEL (all schools) | | 4 | | | | |
| | Responders (75%) | Posttest | (3) | 1 | 3 | 0.25 | 0.75 |
| | Non-Responders (25%) | Posttest | (1) | 1 | 1 | 0.08 | 0.08 |
| | | | | | | SUBTOTAL | 0.83 |
| | | TOTAL | 492 | | 1,183 | | 201.02 |

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*Respondents:* 3rd and 4th grade students, their teachers, their parents/caregivers, and food service personnel.

*Estimated Number of Respondents:* 492.

*Estimated Number of Responses:* 1,183.

*Average Hours per Response:* 0.25 hours per response for students, parents/caregivers and food service personnel; .50 hours for teachers.

*Total Estimated Burden:* 201.02 hours.

*Obligation to Respond:* Voluntary.

Dated: May 10, 2011.

**Audrey Rowe,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2011–13621 Filed 6–1–11; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2011–0003]**

### Notice of Request for a Revision of a Currently Approved Information Collection (Marking, Labeling, and Packaging)

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request a revision of a currently approved information collection regarding the regulatory requirements for marking, labeling, and packaging of meat, poultry, and egg products; and for establishments that produce mechanically separated poultry. FSIS has revised its total annual burden estimate in light of the latest available data. Also, FSIS is requesting permission to use a new form related to the label approval process.

**DATES:** Comments on this notice must be received on or before August 1, 2011.

**ADDRESSES:** FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2–2127, George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5272, Beltsville, MD 20705–5272.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2011–0003. Comments received in

response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

*Docket:* For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8 a.m. and 4:30 p.m., Monday through Friday.

*For Additional Information:* Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065, South Building, Washington, DC 20250, Telephone: (202) 720–0345.

**SUPPLEMENTARY INFORMATION:**

*Title:* Marking, Labeling, and Packaging.

*OMB Number:* 0583–0092.

*Expiration Date of Approval:* 11/30/2011.

*Type of Request:* Revision of a currently approved information collection.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting a revision of a currently approved information collection addressing paperwork requirements specified in the regulations related to marking, labeling, and packaging of meat, poultry, and egg products; and to establishments that produce mechanically separated poultry.

To control the manufacture of marking devices bearing official marks, FSIS requires official meat and poultry establishments and the manufacturers of such devices to submit an Authorization Certificate to the Agency (FSIS Form 5200–7). Such certification is necessary to help prevent the manufacture and use of counterfeit marks of inspection (9 CFR 312.1, 317.3, 381.96 & 381.131).

Meat and poultry establishments and egg products plants must develop labels in accordance with FSIS regulations (9 CFR 317.1, 381.115, & 590.410). To receive approval for such labels, establishments must complete a form ("Application for Approval of Labels, Marking or Device," FSIS Form 7234–1). Respondents also must submit duplicate copies of the labels. The establishment must maintain a copy of all the labeling used, along with product formulation and processing procedures (9 CFR 317.4). Additionally, FSIS has developed a new form to be used by establishments requesting reconsideration of a label application that the Agency has modified or rejected ("Request for Label Reconsideration," FSIS Form 8822–4).

Previously approved labeling that contains changes such as holiday season designs, addition or deletion of coupons, UPC production codes, or recipe suggestions; newly assigned or revised establishment numbers; changes in the arrangement or language of directions for opening containers or serving the product; or the substitution of abbreviations for words or vice versa, do not need additional FSIS approval (9 CFR 317.5). Establishments must keep a copy of the labeling used, along with the product formulation and processing procedures on file.

FSIS requires establishments to keep a written guaranty on file to demonstrate that the packaging material they use to package product is safe and will not adulterate product (9 CFR 317.24 and 381.144).

Poultry establishments producing mechanically separated poultry must have adequate controls in place, including recordkeeping, to ensure that such product complies with the Agency's requirements (9 CFR 381.173).

The Agency is revising the information collection because it has developed a new form that will be used by establishments seeking reconsideration of label applications. Also, FSIS has revised estimates of the total number of respondents based on the most current data available. These revisions support a finding of fewer total burden hours (128,267) than there are in the approved information collection (155,288).

FSIS has made the following estimates based upon an information collection assessment:

*Estimate of Burden:* FSIS estimates that it will take respondents an average of 4 minutes per response related to marking; 75 minutes per response related to labeling applications and recordkeeping; 120 minutes per response related to labeling reconsideration requests; 15 minutes per response related to generically approved labeling recordkeeping; 2 minutes per response related to packaging materials recordkeeping; and 5 minutes per response related to mechanically separated poultry recordkeeping.

*Respondents:* Official meat and poultry establishments, official egg plants, and foreign establishments.

*Estimated No. of Respondents:* 5,736 related to marking; 3,682 related to labeling applications and recordkeeping; 74 related to labeling reconsideration requests; 6,333 related to generically approved labeling recordkeeping; 5,735 related to packaging materials recordkeeping; and 82 related to mechanically separated poultry recordkeeping.

*Estimated No. of Annual Responses per Respondent:* 1 related to marking; 20 related to labeling applications and recordkeeping; 2 related to labeling reconsideration requests; 20 related to generically approved labeling recordkeeping; 2 related to packaging materials recordkeeping; and 455 related to mechanically separated poultry recordkeeping.

*Estimated Total Annual Burden on Respondents:* 128,267 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW, Room 6065, South Building, Washington, DC 20250, Telephone: (202)720–0345.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent both to FSIS, at the addresses provided above, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**USDA Nondiscrimination Statement**

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities

who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on May 24, 2011.

**Alfred V. Almanza,**

*Administrator.*

[FR Doc. 2011–13555 Filed 6–1–11; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Beaverhead-Deerlodge National Forest, Pintler Ranger District; Montana; Flint Foothills Vegetation Management Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Flint Foothills Vegetation Management Project proposes to use clearcut salvage logging, commercial and pre-commercial thinning, and prescribed fire on 5,709 acres of National Forest System Lands affected by a larger, widespread mountain pine beetle infestation within the 44,522-acre project area.

**DATES:** Comments concerning the scope of the analysis must be received by July 5, 2011. The draft environmental impact statement is expected in April 2012 and the final environmental impact statement is expected in September 2012.

**ADDRESSES:** Send written comments to Beaverhead-Deerlodge National Forest, Pintler Ranger District, 88 Business Loop, Philipsburg, MT 59858. Comments may also be sent via e-mail to *comments-northern-beaverhead-deerlodge-pintler@fs.fed.us,* or via facsimile to 406–859–3689.

**FOR FURTHER INFORMATION CONTACT:** Julie Knutson, Interdisciplinary Team Leader at *jcknutson@fs.fed.us,* 559–920–6646; Karen Gallogly, Project Coordinator at *kgallogly@fs.fed.us,* 406–683–3853; or Charlene Bucha Gentry, District Ranger at *cbuchagentry@fs.fed.us,* 406–859–3211.

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**

The purpose and need for the proposal is to (1) salvage harvest dead and dying lodgepole pine stands to create managed conditions and harvest wood products from forested stands infested or at risk for infestation with bark beetles before the value of the wood deteriorate; (2) reduce forest densities in low elevation ponderosa pine and Douglas-fir stands and some lodgepole pine communities to improve resilient forest conditions; (3) use prescribed fire as a disturbance agent in dry forest communities that include the mix of Douglas-fir and ponderosa pine to maintain forest diversity and structure that are resilient to crown fire; (4) create early seral conditions in mid elevation lodgepole pine stands where insect infested stands are dead or dying; (5) reduce forest densities in young previously harvested stands to maintain long term sustained yield; and (6) treat old growth to improve the likelihood of retaining old growth in the landscape because of the potential mortality from the bark beetle infestation.

**Proposed Action**

The Pintler Ranger District proposes to clearcut salvage dead and dying lodgepole pine and harvest post and poles on 863 acres, commercial thin ponderosa pine and Douglas-fir on 1,007 acres, use a combination of clearcut salvage and commercial thin on 703 acres of mixed Douglas-fir and lodgepole pine stands, precommercial thin 1,146 acres of Douglas-fir and lodgepole pine stands, and prescribed burn 1,990 acres of mixed conifer stands. A total of 5,709 acres would be treated within 93 units ranging in size from two to 196 acres. Harvest and treatment methods would include ground-based and cable logging systems, mechanical slash piling, hand-thinning and piling, and aerial and hand-ignition of prescribed fire. Approximately 10 miles of temporary roads and 72 miles of existing Forest System roads would be used to implement treatment activities. All temporary roads constructed for project implementation would be obliterated and rehabilitated upon project completion. The project is proposed for implementation beginning in 2013 and would take several years to complete.

**Responsible Official**

Forest Supervisor for the Beaverhead-Deerlodge National Forest, Dave Myers, 420 Barrett St., Dillon, MT 59725–3572.

**Nature of Decision To Be Made**

The Responsible Official for this project and will decide whether to implement the proposed action or an alternative developed in response to specific resource issues and public comments.

**Preliminary Issues**

Preliminary issues identified by the interdisciplinary team and the public during a previous scoping period in July 2010, include potential impacts to populations of westslope cutthroat trout from treatment activities; potential to increase runoff and erosion by removing vegetation and ground cover; potential to increase noxious weeds populations; maintenance of old growth stand

characteristics where encountered; mitigation of management actions around active nests of Threatened, Endangered, and Sensitive (TES) bird species including great gray owls and Northern Goshawk; maintenance of secure habitat to contribute to wildlife linkages for large animal movements between the Flint Creek Range and Henderson Mountain/John Long Mountains; timing of burning and harvest activities with livestock grazing management, dispersed recreation, hunters and outfitters; and coordination with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) projects within the project area.

The Forest Service recognizes this list if issues may not be complete and issues will be further defined and refined as scoping continues. A comprehensive list of key issues will be determined before the range of alternatives is developed and the environmental analysis is started.

**Scoping Process**

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The District Ranger will mail a scoping letter and map to interested publics, Tribes, and Federal, state and local governments. The Forest will conduct a public meeting in Drummond, MT, in July 2010, to discuss the Proposed Action with interested parties and those who may be affected by the proposal. Notice of the meeting will be posted on the Forest's Web site and news releases will appear in the Philipsburg Mail and other local newspapers.

This project was scoped in July 2010, when the Forest solicited public comment on a proposal to use clearcut salvage logging, commercial and pre-commercial thinning, and prescribed fire to harvest wood products and restore resiliency on about 5,600 acres of National Forest System Lands. After reviewing the comments on the initial proposal, combined with internal assessment of the project, portions of the project have been redesigned and the Forest Service is again seeking public input. Important distinctions between the proposal scoped in July 2010 and this proposal are a change in the objectives to use prescribed fire, identification of old growth within treatment units, a decrease in the number of treatment units, and a slight increase in the number of acres treated.

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, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: May 26, 2011.

**David R. Myers,**

*Forest Supervisor.*

[FR Doc. 2011–13634 Filed 6–1–11; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Tonto National Forest; AZ; Salt River Allotments Vegetative Management EIS

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Tonto National Forest will prepare an Environmental Impact Statement (EIS) on a proposal to improve ecological conditions within the project area using tools such as fire and grazing management and to authorize continued livestock grazing on National Forest System (NFS) lands within the Globe and Tonto Basin Ranger Districts. The Project Area is located along the Salt River in Gila County, Arizona.

**DATES:** Comments concerning the scope of the analysis must be received by July 5, 2011. The draft environmental impact statement is expected November 2011 and the final environmental impact statement is expected March 2012.

**ADDRESSES:** Send written comments to Kathy Nelson, Tonto National Forest, 2324 E. McDowell Rd., Phoenix, AZ 85006. Comments may also be sent via e-mail to *comments-southwestern-tonto@fs.fed.us,* or via facsimile to 602–225–5295.

**FOR FURTHER INFORMATION CONTACT:** Kathy Nelson, 602–225–5328, *knelson@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**

Six authorizations for livestock grazing have or will soon expire and ecological conditions in some areas on these allotments have not moved towards desired future conditions as outlined in the Tonto National Forest Plan. For example, diversity of current vegetation (including where it is located and how it functions) does not meet desired future conditions in all locations within the project area. Past management practices, such as suppression of wildland fires are limited and have not always proven effective. In addition, knowledge and strategies for ecosystem management have changed over time, providing an opportunity to improve vegetative conditions using current science, methods, and strategies. As a result, there is a need to develop new management strategies for ecosystems within the six allotments along the Salt River. The purpose of this effort is to improve ecological conditions within the project area using tools such as fire and grazing management in order to meet desired future conditions as specified in the Forest Plan while balancing multiples uses. In addition, per Forest Service Handbook 2209.13, Chapter 90, section 92.22, the purpose of this action is to authorize livestock grazing in a manner consistent with Forest Plan direction to move ecosystems towards their desired conditions.

**Proposed Action**

The Tonto National Forest proposes to use a set of tools that lessen or eliminate disparities between existing conditions and desired conditions in the project area. Examples of tools that land managers may use to accomplish this include, but are not limited to, livestock grazing, prescribed fire, managed wildland fire, herbicide application, mechanical vegetative removal, and seeding. The proposed action includes an adaptive management strategy that allows land managers to be flexible enough to make timely decisions relative to a host of ever changing environmental conditions (CFR 220.3). This proposed action focuses on entire ecosystem potential rather than a subordinate role of a single resource use or activity within analysis area ecosystems. Since one tool under consideration for executing the proposed action is grazing, Globe and Tonto Basin Ranger Districts, in collaboration with grazing permittees, propose to reauthorize livestock grazing on six allotments; Chrysotile, Haystack

Butte, Dagger, Sedow, Hicks Pikes Peak and Poison Springs/Sierra Ancha. Livestock grazing, as an ecosystem tool, would provide year-long application utilizing various age classes of cattle on each allotment. Grazing would continue to comply with the Tonto National Forest Land Management Plan (1985 as amended), which provides direction for grazing using various management levels in five management areas on these two districts. Grazing practices would comply with national and regional policy and direction (FSM 2200, FSH 2209.13) and would incorporate adaptive management strategies (FSH 2209.13 Chapter 90) to optimize forage production where appropriate and benefit a variety of natural resources and multiple use objectives in ecosystems ranging from grassland to forest. Conditions are highly variable in the analysis area ecosystems due to historically dynamic climatic regimes in the desert southwest and globally changing climate conditions. Production of palatable forage and browse for livestock and wildlife varies greatly both seasonally and annually. Through adaptive management strategies, this proposed action strives to respond to change by utilizing a variety of tactics, which may include but are not limited to, flexible stocking rates, vegetation manipulation, and water development. Actual numbers, season of use, and class of domestic grazing animal would be determined annually within upper allowed stocking limits for the Tonto National Forest of 800 animals per grazing permittee (FSH 2209.13). Data for determining stocking would be gathered throughout each grazing season using a variety of monitoring techniques as described in agency manuals and handbooks as well as through scientific literature produced through other agencies, research stations, and universities. Rangeland allotment infrastructure includes, but is not limited to, forms of improvements such as fences, water wells, spring developments, storage tanks, pipelines, and watering troughs. These improvements range in condition from excellent to poor. Those in poor condition are considered a priority for improvement through this proposed action. Additionally, each allotment will propose a variety of new range improvements to be constructed for facilitation of livestock distribution to accomplish ecosystem objectives.

Additional management tools, including but not limited to, wildfire and prescribed fire and noxious weed treatments are proposed for use to benefit forage and browse production and other resource objectives. Globe and Tonto Basin Ranger Districts also propose use of fuels management techniques on these allotments as authorized through Tonto National Forest Land Management Plan (1985, as amended), to allow wildfire to resume its natural ecological role in fire dependent ecosystems. The proposed action includes specific objectives and treatment alternatives for the following Management Areas found within analysis area:

**6J General Management Area—Tonto Basin Ranger District**

Wildland fire would be managed to protect, maintain, and enhance Federal lands in a cost effective manner. A combination of wildfire and prescribed fire may be used to provide a mosaic of age classes and a mix of successional stages within fire-dependent ecosystems. Wildfires, or portions of those fires, would be suppressed when they adversely affect forest resources, endanger public safety, or have potential to damage property and natural/cultural resources. Sonoran Desert and riparian vegetation types would be protected from fire except where burn plans identify resource and ecological need.

**2F General Management Area—Globe Ranger District**

Wildland fire would be managed to protect, maintain, and enhance Federal lands in a cost effective manner. A combination of wildfire and prescribed fire may be used to provide a mosaic of age classes and a mix of successional stages within fire-dependent ecosystems. Wildfires, or portions of those fires, would be suppressed when they adversely affect forest resources, endanger public safety, or have potential to damage property and natural/cultural resources. Sonoran Desert and riparian vegetation types would be protected from fire except where burn plans identify resource and ecological needs. A variety of fuels management techniques may be used to reduce natural and activity fuels to condition class 1 (*e.g.,* fire regime within historic range and vegetation composition, function, and structure are within normal range), including fuel wood harvesting, chipping, pile and burn, and broadcast burning.

**2C Upper Salt River Management Area—Globe Ranger District**

Wildland fire would be managed to protect, maintain, and enhance Federal lands in a cost effective manner. Fire management objectives for this area include providing a mosaic of age classes within total type, which would provide a mix of successional stages, and allow wildfire to resume its natural ecological role within ecosystems. Wildfires, or portions of those fires, would be suppressed when they adversely affect forest resources, endanger public safety, or have potential to damage property and natural/cultural resources.

**2B Salt River Canyon Wilderness—Globe Ranger District/5A Sierra Ancha Wilderness—Pleasant Valley Ranger District**

Wildland fire would be managed to protect, maintain, and enhance Federal lands in a cost effective manner consistent with wilderness resource objectives. Wildfire may be used to play, as nearly as possible, its natural role in wilderness while also reducing unnatural fuel hazards as identified in Forest Service Manual and approved Wilderness Implementation Plan.

**Responsible Officials**

Richard Reitz, Globe District Ranger and Kelly Jardine, Tonto Basin District Ranger.

**Nature of Decision To Be Made**

The Forest Service would evaluate the proposed action and alternatives to the proposed action. After reviewing the proposed action, the alternatives, the environmental analysis, and considering public comment, the two District Rangers would reach a decision that is in accordance with the purpose and need of this project. The decision would include a description of activities that would be implemented.

**Preliminary Issues**

Multiple uses considered within the Salt River Corridor is an issue with Threatened, Endangered and Sensitive species, recreation, and riparian resources.

**Scoping Process**

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

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.

Dated: May 25, 2011.

**Richard Reitz,**

*Globe District Ranger.*

Dated: May 25, 2011.

**Kelly Jardine,**

*Tonto Basin District Ranger.*

[FR Doc. 2011–13640 Filed 6–1–11; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Juneau Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Juneau Resource Advisory Committee will meet in Juneau, AK. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose is to hold a pre-work meeting prior to the project proposal deadline.

**DATES:** The meeting will be held on June 16, 2011, and will begin at 8 a.m.

**ADDRESSES:** The meeting will be held at the Juneau Ranger District, 8510 Mendenhall Loop Road, Juneau, AK. Written comments may be submitted as described under Supplementary Information.

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 Juneau Ranger District, 8510 Mendenhall Loop Road, Juneau, AK 99801. Please call ahead to 907–586–8800 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Hannah Atadero, RAC Coordinator, PO Box 21628, Juneau, AK 99802; 907–586–8879; *hatadero@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 Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed For Further Information.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: (1) development and agreement on scoring criteria for project proposals, and (2) agreement on an initial meeting date for project proposal review. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 6, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Hannah Atadero, Juneau Resource Advisory Committee, PO Box 21628, Juneau, AK 99802, or by e-mail to *hatadero@fs.fed.us,* or via facsimile to 907–586–7090.

Dated: May 25, 2011.

**Forrest Cole,**

*Forest Supervisor.*

[FR Doc. 2011–13641 Filed 6–1–11; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Tuolumne-Mariposa Counties Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Meeting.

**SUMMARY:** The Tuolumne-Mariposa Counties Resource Advisory Committee will meet on June 13, 2011 at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to hear presentations made by project proponents requesting RAC funding.

**DATES:** The meeting will be held June 13, 2011, from 12 p.m. to 3 p.m.

**ADDRESSES:** The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

**FOR FURTHER INFORMATION CONTACT:** Beth Martinez, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (209) 532–3671, extension 320; e-mail *bethmartinez@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Agenda items to be covered include: (1) Presentation of primarily Forest Service project submittals by project proponents; (2) Public comment on meeting proceedings. This meeting is open to the public.

Dated: May 26, 2011.

**Christina M. Welch,**

*Deputy Forest Supervisor.*

[FR Doc. 2011–13642 Filed 6–1–11; 8:45 am]

BILLING CODE 3410–ED–P

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of meeting.

**DATE AND TIME:** Friday, June 10, 2011; 9:30 a.m. EDT.

**PLACE:** 624 Ninth Street, NW., Room 540, Washington, DC 20425.

**Meeting Agenda**

This meeting is open to the public.

I. Approval of Agenda
II. Approval of Apr. 8, 2011 Meeting Minutes
III. Program Planning: Update and discussion of projects.
- Consideration of statutory report topic for FY 2012
- Eminent Domain Briefing

IV. State Advisory Committee Issues:
- Discussion of Commissioner membership on SACs
- Re-chartering the Connecticut SAC
- Re-chartering the Tennessee SAC

V. Management and Operations:
- Staff Director's report

VI. Announcements
VII. Adjourn

**CONTACT PERSON FOR FURTHER INFORMATION:** Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at least three (3) days before the scheduled meeting date at (202) 376–8105.

Dated: May 31, 2011.

**Kimberly A. Tolhurst,**

*Senior Attorney-Advisor.*

[FR Doc. 2011–13825 Filed 5–31–11; 4:15 pm]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### District Export Council Nomination Opportunity

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

**ACTION:** Notice of opportunity for appointment to serve as a District Export Council member.

**SUMMARY:** The Department of Commerce is currently seeking nominations of individuals for consideration for appointment by the Secretary of Commerce to serve as members of one of the 60 District Export Councils (DECs) nationwide. DECs are closely affiliated with the U.S. Export Assistance Centers of the U.S. and Foreign Commercial Service (CS), and play a key role in the planning and coordination of export activities for their communities.

**DATES:** Nominations for individuals to a DEC must be received by the local USEAC Director by close of business on July 15, 2011.

**FOR FURTHER INFORMATION CONTACT:** Please contact the Director of your local USEAC for more information on DECs and the nomination process. You may identify your local USEAC by entering your zip code online at *http://www.buyusa.gov/home/us.html.* For general program information, contact Daniel O'Brien, National DEC Liaison, CS, at (202) 482–1376.

**SUPPLEMENTARY INFORMATION:** As lead organizations serving the international business community, and working together with USEACs, the mission of the DECs is to facilitate the development of an effective local export assistance network, support the expansion of export opportunities for local U.S. companies, serve as a communication link between the business community and CS, and assist in coordinating the activities of trade assistance partners to leverage available resources.

*Selection Process:* Each DEC has a target membership of 30. Approximately half of the positions are open on each DEC for the four-year term from January 1, 2012, through December 31, 2015. The local USEAC Director receives nominations for membership, and makes recommendations to the Secretary of Commerce in consultation with the local DEC Executive Committee. After ensuring that nominees meet the membership criteria (described below) and after completion of a vetting process, the Secretary selects nominees for appointment to local DECs. DEC members are appointed by and serve at the pleasure of the Secretary of Commerce.

*Membership Criteria:* Individuals appointed to a DEC become part of a select corps of trade experts dedicated to providing international trade leadership and guidance to the local business community and assistance to the Department of Commerce on export development issues. Appointment is based upon an individual's international trade leadership in the local community, ability to influence the local environment for exporting, interest in export development, and willingness and ability to devote time to DEC activities. Members include exporters, export service providers and others whose profession supports U.S. export promotion efforts. DEC member appointments are made without regard to political affiliation. DEC membership is open to U.S. citizens and permanent residents of the United States. As representatives of the local exporting community, DEC Members must reside in, or conduct the majority of their work in, the territory that the DEC covers. DEC membership is not open to registered Federal lobbyists, Federal government employees (other than USEAC Directors), or individuals representing foreign governments.

**Authority:** 15 U.S.C. 1501 *et seq.,* 15 U.S.C. 4721.

Dated: May 26, 2011.

**Anne Grey,**

*Acting DAF of Office of Domestic Operations.*

[FR Doc. 2011–13711 Filed 6–1–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–875]**

### Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

**SUMMARY:** On January 31, 2011, the Department of Commerce ("Department") published the *Preliminary Results* of the 2009–2010 administrative review of the antidumping duty order on non-malleable cast iron pipe fittings ("pipe fittings") from the People's Republic of China ("PRC").[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* We did not receive comments on the *Preliminary Results.* We find that the only participating mandatory respondent in this review, NEP (Tianjin) Machinery Company ("NEP Tianjin") did not sell subject merchandise at less than normal value during the period of review ("POR"), April 1, 2009, through March 31, 2010. The final dumping margin for this administrative review is listed in the "Final Results of Review" section below.

**DATES:** *Effective Date:* June 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Karine Gziryan, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4081.

**SUPPLEMENTARY INFORMATION:**

#### Background

As noted above, on January 31, 2011, the Department published the *Preliminary Results* of pipe fittings from the PRC. The Department did not receive comments from interested parties on our *Preliminary Results.*

#### Changes Since the Preliminary Results

We have not made any changes to our *Preliminary Results.*

#### Scope of the Order

The products covered by the order are finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from ¼ inch to 6 inches, whether threaded or unthreaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as "cast iron pipe fittings" or "gray iron pipe fittings." These cast iron pipe fittings are normally produced to ASTM A–126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A–395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of the order. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or push on ends (PO), or flanged ends and

[1] *See Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 5333 (January 31, 2011) ("*Preliminary Results*").

produced to the American Water Works Association ("AWWA") specifications AWWA C110 or AWWA C153 are not included.

Imports of subject merchandise are currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60, 7307.19.30.85, 7326.90.8588. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.[2]

**Non-Market Economy Treatment**

The Department considers the PRC to be a non-market economy ("NME") country.[3] In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("the Act"), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this review. Therefore, the Department continues to treat the PRC as an NME country for purposes of the final results.

**Surrogate Country**

In the *Preliminary Results,* the Department stated that it selected India as the appropriate surrogate country to use in this administrative review for the following reasons: 1) it is a significant producer of comparable merchandise; 2) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; and 3) the Department has reliable data from India that it can use to value the factors of production.[4] The Department received no comments on the surrogate country issue after the *Preliminary Results.* Therefore, the Department has not made changes to its findings with respect to the selection of a surrogate country for the final results.

**Separate Rates**

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results,* the Department found it is not necessary to perform any further separate-rate analysis with respect to the lone mandatory respondent (*i.e.,* NEP Tianjin) because it submitted information indicating that NEP Tianjin is a wholly foreign-owned enterprise under Chinese law.[5] The Department did not receive comments on its separate rate analysis. Therefore, the Department has not made changes to its findings with respect to the separate rate analysis for the final results.

**Final Results of Review**

The dumping margin for the POR is as follows:

| Company | Antidumping duty margin (percent) |
|---|---|
| NEP (Tianjin) Machinery Company ..... | 00.00 |

**Assessment**

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis.*

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 75.5 percent;[6] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. The deposit requirements, when imposed, shall remain in effect until further notice.

**Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

[2] On April 21, 2009, in consultation with CBP, the Department added the following HTSUS classification to the AD/CVD module for pipe fittings: 7326.90.8588. *See* Memorandum from Abdelali Elouaradia, Office Director, Import Administration, Office 4 to Stephen Claeys, Deputy Assistant Secretary, Import Administration regarding the Final Scope Ruling on Black Cast Iron Cast, Green Ductile Flange and Twin Tee, antidumping duty order on non-malleable iron cast pipe fittings from China, dated September 19, 2008. *See also* Memorandum to the file from Karine Gziryan, Financial Analyst, Office 4, regarding Module Update adding Harmonized Tariff Schedule Number for twin tin fitting included in the scope of antidumping order on non-malleable iron cast pipe fittings from China, dated April 22, 2009.

[3] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 and accompanying Issues and Decision Memorandum at Comment 1 (October 25, 2007).

[4] *See Preliminary Results,* 76 FR at 5334.

[5] *See* NEP Tianjin's July 7, 2010 Section A Questionnaire Response.

[6] *See Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Antidumping Duty Order,* 68 FR 16765 (April 7, 2003).

and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 25, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011–13713 Filed 6–1–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–820]**

### Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of 2009–2010 Antidumping Duty Administrative Review

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

**SUMMARY:** In response to requests from petitioners,[1] the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from India ("hot-rolled steel") manufactured by Ispat Industries Limited ("Ispat"), JSW Steel Limited ("JSW"), and Tata Steel Limited ("Tata"). The period of review ("POR") is December 1, 2009, through November 30, 2010. We preliminarily determine that Ispat, JSW, and Tata had no entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

**DATES:** *Effective Date:* June 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Christopher Hargett or James Terpstra, AD/CVD Operations Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4161 and (202) 482–3965, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 3, 2001, the Department published in the **Federal Register** the antidumping duty order on Indian hot-rolled steel. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From India,* 66 FR 60194 (December 3, 2001) ("*Amended Final Determination*"). On December 1, 2010, the Department published in the **Federal Register** a notice titled "Opportunity to Request Administrative Review" of the antidumping duty order on Indian hot-rolled steel. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 74682 (December 1, 2010). On December 30, 2010, and January 3, 2011, petitioners requested an administrative review of the antidumping duty order on Indian hot-rolled steel, for subject merchandise produced or exported by Ispat, JSW, and Tata. On January 28, 2011, the Department published a notice of initiation of antidumping duty administrative review of Indian hot-rolled steel for the period December 1, 2009, through November 30, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 5137 (January 28, 2011) ("*Initiation Notice*"). On January 31, 2011, February 4, 2011, and February 15, 2011, respectively, JSW, Ispat and Tata each informed the Department that they did not have shipments of subject merchandise to the United States during the POR.

On April 11, 2011, the Department placed on the record and invited interested parties to comment on U.S. Customs and Border Protection ("CBP") data obtained to corroborate the claims of the respondents. *See* Memorandum to the File from Christopher Hargett, International Trade Compliance Analyst, through Melissa Skinner, Office Director, concerning "Certain Hot Rolled Carbon Steel Flat Products from India: Customs and Border Protection ("CBP") Data for Corroboration of Claims of No Shipments," dated April 11, 2011 ("CBP Data Memo"). We received no comments regarding the CBP data.

On May 13, 2011, the Department placed on the record the April 13, 2011, inquiry of no shipments to CBP from the Department. *See* Memorandum to the File from Christopher Hargett, International Trade Compliance Analyst, through Melissa Skinner, Office Director, concerning "Certain Hot-Rolled Carbon Steel Flat Products from India: Customs No Shipments Inquiry," dated May 13, 2011. The Department did not receive a reply from CBP regarding its inquiry.

### Period of Review

The POR covered by this review is December 1, 2009, through November 30, 2010.

### Scope of the Order

The merchandise subject to this order is certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in the scope of this order are vacuum-degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high-strength low-alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low-carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

[1] The petitioners are the United States Steel Corporation Steel and Nucor Corporation (collectively "petitioners").

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot-rolled carbon steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.,* American Society for Testing and Materials ("ASTM") specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers ("SAE")/American Iron & Steel Institute ("AISI") grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- United States Steel ("USS") Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel covered by this order, including: Vacuum-degassed fully stabilized; high-strength low-alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

**Preliminary Results of Review**

As noted in the "Background" section above, Ispat, Tata and JSW have each submitted timely-filed certifications indicating that they had no shipments of subject merchandise to the United States during the POR.

On April 11, 2011, the Department released to interested parties the CBP data it intended to use for corroboration of the respondents' claims. *See* CBP Data Memo. The Department received no comments.

Based on the claims of the parties and our analysis of CBP data, we preliminarily determine that the evidence on the record indicates that Tata, Ispat, and JSW did not export subject merchandise to the United States during the POR.

**Disclosure**

The Department will disclose these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

**Comments**

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. *See* 19 CFR 351.309(c)(2). Additionally, parties are requested to provide their case brief and rebuttal briefs in electronic format (*e.g.,* Microsoft Word, pdf, etc.). Interested parties, who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of this review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

**Assessment Rate**

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the publication of the final results of this review.

Since the implementation of the 1997 regulations, our practice concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27393 (May 19, 1997). As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

Because "as entered" liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Ispat, JSW, or Tata and exported by other parties at the all-others rate, should we continue to find that Ispat, Tata and JSW had no shipments of subject merchandise to the United States in our final results. *See, e.g., Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010). In addition, the Department finds that it is more consistent with the May

2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Ispat, JSW, and Tata and issue appropriate instructions to CBP based on the final results of the review.

**Cash Deposit Requirements**

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of hot-rolled carbon steel flat products from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Ispat, JSW, and Tata, and for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (2) if the exporter is not a firm covered in these reviews, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV conducted by the Department, the cash deposit rate will be 23.87 percent, the all-others rate established in the LTFV, as amended, adjusted for export subsidies. *See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Administrative Review,* 69 FR 36060, 36062 n.2 (June 28, 2004) ("*India Hot-Rolled First Review*") ("The 'all others' cash deposit rate, applied by {CBP}, is reduced to account for the export subsidy rate found in the countervailing duty investigation. The adjusted 'all others' rate is 23.87 percent."); *Amended Final Determination.* These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and countervailing duties occurred and the subsequent assessment of double antidumping and countervailing duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: May 26, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011–13706 Filed 6–1–11; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–814]**

### Circular Welded Non-Alloy Steel Pipe From Taiwan: Notice of Rescission of Antidumping Duty Administrative Review

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

**SUMMARY:** In response to a request from an interested party, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Taiwan. The period of review is November 1, 2009, through October 31, 2010. Based on the withdrawal of request for review submitted by United States Steel Corporation (Petitioner), we are now rescinding this administrative review.

**DATES:** *Effective Date:* June 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1131 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 1, 2010, the Department published a notice announcing an opportunity for interested parties to request an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Taiwan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 67079 (November 1, 2010). On November 30, 2010, the Petitioner filed a request that the Department initiate an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Taiwan with respect to the following four companies: Far East Machinery Co., Ltd., Kao Hsing Chang Iron & Steel Corp. (also known as Kao Hsiung Chang Iron & Steel Corp.), Yieh Phui Enterprise Co., Ltd., and Chung Hung Steel Corporation (also known as Chung Hung Steel Co., Ltd.). Based on Petitioner's request, on December 28, 2010, the Department published in the *Federal Register* a notice of initiation of an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Taiwan covering the period November 1, 2009, through October 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 81565, 81567 (December 28, 2010). On May 4, 2011, Petitioner submitted a letter withdrawing its request for a review of the order with respect to all four of the respondent companies.

**Rescission of Review**

Pursuant to 19 CFR 351.213(d)(1) of the Department's regulations, the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request. Therefore, although Petitioner withdrew its request after the 90-day deadline, the Department has the discretion to extend this time limit. Consistent with the Department's practice, we find it reasonable to extend the withdrawal deadline and to rescind the review with respect to the four respondents because the Department has not devoted significant time or resources to the review. *See, e.g., Welded Large Diameter Line Pipe From Japan: Notice of Rescission of Antidumping Duty Administrative Review,* 75 FR 38989, 38990 (July 7, 2010); *see also Persulfates from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review,* 71 FR 13810, 13811 (March 17, 2006).

**Assessment**

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the four respondent companies, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department

intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

**Notifications**

This notice serves as a final reminder to importers for whom this review is being rescinded of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 25, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–13710 Filed 6–1–11; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XW53**

### Atlantic Coastal Fisheries Cooperative Management Act Provisions; Horseshoe Crabs; Application for Exempted Fishing Permit

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

**ACTION:** Notification of a proposal to conduct exempted fishing; request for comments.

**SUMMARY:** The Acting Director, Office of Sustainable Fisheries, has made a preliminary determination that the subject exempted fishing permit (EFP) application submitted by Limuli Laboratories of Cape May Court House, NJ, contains all the required information and warrants further consideration. The proposed EFP would allow the harvest of up to 10,000 horseshoe crabs from the Carl N. Shuster Jr. Horseshoe Crab Reserve (Reserve) for biomedical purposes and require, as a condition of the EFP, the collection of data related to the status of horseshoe crabs within the reserve. The Acting Director has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic States Marine Fisheries Commission's (Commission) Horseshoe Crab Interstate Fisheries Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Acting Director proposes to recommend that an EFP be issued that would allow up to two commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations promulgated under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). The EFP would allow for an exemption from the Reserve.

Regulations under the Atlantic Coastal Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Written comments on this action must be received on or before June 17, 2011.

**ADDRESSES:** Written comments should be sent to Emily Menashes, Acting Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope "Comments on Horseshoe Crab EFP Proposal." Comments may also be sent via fax to (301) 713–0596. Comments on this notice may also be submitted by e-mail to: *Horseshoe-Crab.EFP@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: "Horseshoe Crab EFP Proposal."

**FOR FURTHER INFORMATION CONTACT:** Steve Meyers, Chief (A), Partnerships and Communication Division, Office of Sustainable Fisheries, (301) 713–2334, ext. 174.

**SUPPLEMENTARY INFORMATION:**

**Background**

Limuli Laboratories submitted an application for an EFP on April 19, 2011, to collect up to 10,000 horseshoe crabs for biomedical and data collection purposes from the Reserve. The applicant has applied for, and received, a similar EFP every year from 2001–2010. The current EFP application specifies that: (1) The same methods would be used in 2011 that were used in years 2001–2010, (2) at least 15 percent of the bled horseshoe crabs would be tagged, and (3) there had not been any sighting or capture of marine mammals or endangered species in the trawling nets of fishing vessels engaged in the collection of horseshoe crabs since 1993. The project submitted by Limuli Laboratories would provide morphological data on horseshoe crab catch, would tag a portion of the caught horseshoe crabs, and would use the blood from the caught horseshoe crabs to manufacture Limulus Amebocyte Lysate (LAL), an important health and safety product used for the detection of endotoxins. The LAL assay is used by medical professionals, drug companies, and pharmacies to detect endotoxins in intravenous pharmaceuticals and medical devices that come into contact with human blood or spinal fluid.

**Results of 2010 EFP**

During the 2010 season, a total of 7,497 horseshoe crabs were gathered over a period of 16 days, from the Carl N. Schuster Jr. Horseshoe Crab Reserve (Reserve) for the manufacture of LAL. After transportation to the laboratory, the horseshoe crabs were inspected for size, injuries, and responsiveness. The injured horseshoe crabs numbered 553, or 7.38% of the total, while 66, or 0.88%, were noted as unresponsive. In addition, 66 horseshoe crabs were rejected due to small size. Overall, 6,812 horseshoe crabs were used (bled) in the manufacture of a LAL.

Two hundred of the bled horseshoe crabs were randomly selected for activity, morphometric and aging studies. The majority (96 percent) of these horseshoe crabs were considered "active," and 4 percent were "very active." Morphometric studies noted that average inter-ocular distances, prosoma widths and weights of these 200 horseshoe crabs were comparable to previous years (2001–2009). The ages of the specimens in 2010 were more evenly distributed throughout the age classes than in previous years, with 40.5% categorized as young, 30.5% medium aged, 25.5% old aged, and very few first-year horseshoe crabs (2.5%).

The 200 studied horseshoe crabs and 925 additional bled horseshoe crabs were tagged and released into the Delaware Bay. To date, the tagging of 4,413 horseshoe crabs during 2001–2010 has resulted in 96 live recaptures. The

observed horseshoe crabs were found 1 to 8 years after release, primarily along the Delaware Bay shores during their spawning season.

**Proposed 2011 EFP**

Limuli Laboratories proposes to conduct an exempted fishery operation using the same means, methods, and seasons proposed/utilized during the EFPs in 2001–2010. Limuli proposes to continue to tag at least 15 percent of the bled horseshoe crabs as they did in 2010. NMFS would require that the following terms and conditions be met for issuance of the EFP:

1. Limiting the number of horseshoe crabs collected in the Reserve to no more than 500 crabs per day and to a total of no more than 10,000 crabs per year;
2. Requiring collections to take place over a total of approximately 20 days during the months of July, August, September, October, and November. (Horseshoe crabs are readily available in harvestable concentrations nearshore earlier in the year, and offshore in the Reserve from July through November);
3. Requiring that a 5½ inch (14.0 cm) flounder net be used by the vessel to collect the horseshoe crabs. This condition would allow for continuation of traditional harvest gear and adds to the consistency in the way horseshoe crabs are harvested for data collection;
4. Limiting trawl tow times to 30 minutes as a conservation measure to protect sea turtles, which are expected to be migrating through the area during the collection period, and are vulnerable to bottom trawling;
5. Requiring that the collected horseshoe crabs be picked up from the fishing vessels at docks in the Cape May Area and transported to local laboratories, bled for LAL, and released alive the following morning into the Lower Delaware Bay; and
6. Requiring that any turtle take be reported to NMFS, Northeast Region, Assistant Regional Administrator of Protected Resources Division, within 24 hours of returning from the trip in which the incidental take occurred.

As part of the terms and conditions of the EFP, for all horseshoe crabs bled for LAL, NMFS would require that the EFP holder provide data on sex ratio and daily harvest. Also, the EFP holder would be required to examine at least 200 horseshoe crabs for morphometric data. Terms and conditions may be added or amended prior to the issuance of the EFP.

The proposed EFP would exempt two commercial vessels from regulations at 50 CFR 697.7(e) and 697.23(f), which prohibit the harvest and possession of horseshoe crabs from the Reserve on a vessel with a trawl or dredge gear aboard.

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

Dated: May 27, 2011.

**Emily Menashes,**

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

[FR Doc. 2011–13716 Filed 6–1–11; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RIN 0648–XA369]**

### Marine Mammals; File No. 14329

**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 a major amendment to Permit No. 14329 has been issued to the North Pacific Universities Marine Mammal Research Consortium (NPUMMRC), University of British Columbia, Vancouver, BC., Canada.

**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:** Tammy Adams or Amy Sloan, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** On April 18, 2011, notice was published in the **Federal Register** (76 FR 21703) that a request for an amendment to Permit No. 14329 to conduct research on northern fur seals (*Callorhinus ursinus*) 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), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The amendment adds authorization for additional sampling and instrument attachment for lactating female fur seals already authorized for capture, and serial recaptures of their pups following suckling to take morphometric measurement and assess energy transfer. The amendment is valid through the expiration date of the permit, August 31, 2014.

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.

Dated: May 26, 2011.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–13712 Filed 6–1–11; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA288**

### Marine Mammals; File No. 15748

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that a permit has been issued to the Alaska SeaLife Center (ASLC), Seward, AK, to conduct research on marine mammals.

**ADDRESSES:** The permit 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

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

**FOR FURTHER INFORMATION CONTACT:** Tammy Adams or Joselyd Garcia-Reyes, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** On March 14, 2011, notice was published in the **Federal Register** (76 FR 13603) that a request for a permit to conduct research on marine mammals had been

submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit authorizes capture and harassment of free-living Weddell seals (*Leptonychotes weddellii*) in McMurdo Sound and along the shore of Ross Island, Antarctica to study thermoregulation. The research involves capture and restraint of adult females and pups/juveniles of either sex for attachment of scientific instruments, morphometric measurements, ultrasound, and tissue sampling. Harassment of additional seals in the vicinity of captured animals is also authorized, as is research-related mortality. Tissue samples collected may be exported from Antarctica for analysis in the U.S. The permit expires August 30, 2015.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: May 26, 2011.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–13714 Filed 6–1–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Meeting of the Department of Defense Military Family Readiness Council (MFRC); Notice of Cancellation

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Notice of cancellation.

**SUMMARY:** On May 23, 2011 (76 FR 29727), the Department of Defense Military Family Readiness Council (MFRC) gave notice of a meeting to be held on June 13, 2011, from 2 p.m. to 4 p.m. at the Pentagon Conference Center B6. Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given that this meeting has been cancelled and a subsequent meeting will be scheduled in September 2011. The purpose of the Council meeting is to review the military family programs which will be the focus for the Council for next year, review the status of warrior care, and address selected concerns of military family organizations.

The June 13, 2011 meeting is cancelled due to non-conformance of the members to hold a quorum.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melody McDonald or Ms. Betsy Graham, Office of the Deputy Under Secretary (Military Community & Family Policy), 4000 Defense Pentagon, Room 2E319, Washington, DC 20301–4000. Telephones (571) 256–1738; (703) 697–9283 and/or e-mail: *FamilyReadinessCouncil@osd.mil.*

Dated: May 27, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison, Department of Defense.*

[FR Doc. 2011–13628 Filed 6–1–11; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Global Positioning System Directorate (Gpsd); Notice of Meeting

**ACTION:** Notice of Meeting—Public Interface Control Working Group (ICWG) for Signals-in-Space (SiS) Documents (IS–GPS–200E, IS–GPS–705A, IS–GPS–800A).

**SUMMARY:** This notice informs the public that the Global Positioning Systems (GPS) Directorate will be hosting a Public Interface Control Working Group (ICWG) meeting for the NAVSTAR GPS public signals in space (SiS) documents; IS–GPS–200 (Navigation User Interfaces), IS–GPS–705 (User Segment L5 Interfaces), and IS–GPS–800 (User Segment L1C Interface). The purpose of this meeting will be twofold: (1) To resolve the comments against the public signals in space (SiS) documents with respect to the seven issues outlined below, and (2) to collect issues/comments outside the scope of the issues outlined below for analysis and possible integration into the following release. The ICWG is open to the general public. For those who would like to attend and participate in this ICWG meeting, we request that you register no later than July 11, 2011. Please send the registration to *mark.marquez.ctr@losangeles.af.mil* and provide your name, organization, telephone number, address, and country of citizenship.

Please note that the Directorate's primary focus will be the disposition of the comments against the following GPS related topics:

- Public Document Management (GPS III terminology and SSV group delay),
- Pseudorandom Noise (PRN) Expansion,
- User Range Accuracy (URA) Definition,
- Almanac Intervals,
- Pseudorange Parameters,
- Technical Note 36,
- Civil Navigation (CNAV) Durations.

All comments must be submitted in Comments Resolution Matrix (CRM) form. These forms along with the Was/Is Matrix, current versions of the documents, and the official meeting notice will be posted at: *http://www.gps.gov/technical/ICWG/*

Comments outside the scope of the above issues will be collected, catalogued, and discussed during the public ICWG as potential inclusions to the version following this release. If accepted, these changes will be processed through the formal Directorate change process for IS–GPS–200, IS–GPS–705, and IS–GPS–800.

Please provide them in the CRM form and submit to Tony Marquez by July 11, 2011.

**FOR FURTHER INFORMATION CONTACT:** Tony Marquez, *Mark.marquez.ctr@losangeles.af.mil,* (310) 416–8476; Captain Neil Petersen, *neil.petersen@losangeles.af.mil,* (310) 653–3499; Lieutenant Albert Yu, *albert.yu@losangeles.af.mil,* (310) 653–3207.

**Bao-Anh Trinh,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 2011–13638 Filed 6–1–11; 8:45 am]

**BILLING CODE 5001–10–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, Privacy, Information and

Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 1, 2011.

**ADDRESSES:** Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW, LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, 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: May 27, 2011.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

### Office of Planning, Evaluation and Policy Development

*Type of Review:* New.

*Title of Collection:* Analysis of State Bullying Laws and Policies.

*OMB Control Number:* 1875–NEW.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Once.

*Affected Public:* State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

*Total Estimated Number of Annual Responses:* 400.

*Total Estimated Number of Annual Burden Hours:* 276.

*Abstract:* The Department's Policy and Program Studies Service (PPSS) is conducting an analysis of bullying laws and policies. The field data collection portion of the study will involve case studies conducted in 24 school sites nationwide to document state and local implementation of anti-bullying laws and policies. The study will examine how policies are influenced by state legislative requirements, including ways that state and district policies facilitate or create challenges for effective implementation. The study will aim to identify promising strategies that school districts are implementing to combat bullying in schools. This information will be used by the Department to better support bullying prevention activities.

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 4634. 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. 2011–13726 Filed 6–1–11; 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, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Interested persons are invited to submit comments on or before July 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 emailed 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: May 27, 2011.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

### Office of Elementary and Secondary Education

*Type of Review:* Extension.

*Title of Collection:* Impact Aid Discretionary Construction Grant Program.

*OMB Control Number:* 1810–0657.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Annually.

*Affected Public:* State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

*Total Estimated Number of Annual Responses:* 360.

*Total Estimated Annual Burden Hours:* 1,080.

*Abstract:* The Impact Aid Program, authorized by Title VIII of the Elementary and Secondary Education Act, as amended, provides financial assistance to Local Educational Agencies (LEA) whose enrollment or revenues are adversely affected by Federal activities. Reauthorization authorized a Discretionary Construction Grant program under Section 8007(b). The Impact Aid Discretionary

Construction Program provides grants to eligible Impact Aid school districts for emergency repairs and modernization of school facilitates. The eligible Impact Aid school districts have a limited ability to raise revenues for capital improvements because they have large areas of Federal land within their boundaries. As a result, these districts find it difficult to respond when their school facilities are in need of emergency repairs or modernization; the Impact Aid Discretionary Construction Program assists these LEAs.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 4521. 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. 2011–13729 Filed 6–1–11; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Advanced Scientific Computing Advisory Committee

**AGENCY:** Department of Energy, Office of Science.

**ACTION:** Notice of open teleconference meeting.

**SUMMARY:** This notice announces an open teleconference meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, June 23, 2011, 2 p.m. to 4 p.m.

**ADDRESSES:** The meeting is open to the public. To access the call:

1. Dial Toll-Free Number: 866–740–1260 (U.S. & Canada).

2. International participants dial: Toll Number: (303) 248–0285.

3. Enter access code 8083012, followed by "#".

To ensure we have sufficient access lines for the public, we request that members of the public notify the DFO, Christine Chalk, that you intend to call-into the meeting via e-mail at *christine.chalk@science.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Melea Baker, Office of Advanced Scientific Computing Research; SC–21/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585–1290; Telephone (301) 903–7486, e-mail at: *Melea.Baker@science.doe.gov*).

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The purpose of this Committee is to provide advice and recommendations to the Department of Energy on scientific priorities within the field of advanced scientific computing research.

*Tentative Agenda:* Agenda will include discussion of the following topics:

- Discussion of the draft report of the subcommittee on the data policies Charge.
- Public Comment Period.

*Public Participation:* This teleconference meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda should contact Melea Baker via Fax at (301) 903–4846 or by e-mail at: *Melea.Baker@science.doe.gov.* Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Time allotted for individuals wishing to make public comments will depend on the number of individuals who wish to speak, but will not exceed 10 minutes.

*Minutes:* The minutes of the meeting will be available for viewing within 60 days by contacting Ms. Baker at the address or e-mail above.

Issued at Washington, DC on May 26, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–13658 Filed 6–1–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### DOE/NSF Nuclear Science Advisory Committee

**AGENCY:** Department of Energy, Office of Science.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, June 30, 2011, 8:30 a.m.–5 p.m.; Friday, July 1, 2011, 8:30 a.m.–11:30 p.m.

**ADDRESSES:** Crystal City Marriott at Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, Virginia 22202, 703–413–5500.

**FOR FURTHER INFORMATION CONTACT:** Brenda L. May, U.S. Department of Energy; SC–26/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; *Telephone:* (301) 903–0536.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The purpose of NSAC is to provide advice and recommendations to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

*Tentative Agenda:* Agenda will include discussions of the following:

**Thursday, June 30, 2011**

- Perspectives from Department of Energy and National Science Foundation.
- Update from the Department of Energy and National Science Foundation's Nuclear Physics Offices.
- Presentation of the Neutron Charge Subcommittee Report and Recommendation.
- Presentation of the Public Access to Research Results Report and Recommendation.
- Discussion and Approval of the Public Access to Research Results Report.
- Discussion of the Neutron Charge Report.
- Public Comment Period.

**Friday, July 1, 2011**

• Report from the Underground Science Committee.

• Further Discussion on the Neutron Recommendations.

• Public Comment (10-minute rule).

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda should contact Brenda L. May at (301) 903–0536 or by e-mail at: *Brenda.May@science.doe.gov.* Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Time allotted for individuals wishing to make public comments will depend on the number of individuals who wish to speak, but will not exceed 10 minutes.

*Minutes:* The minutes of the meeting will be available for viewing within 60 days on the Committee's Web site: *http://science.energy.gov/np/nsac/.*

Issued at Washington, DC on May 26, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–13685 Filed 6–1–11; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Case No. CAC–033]**

### Energy Conservation Program for Certain Industrial Equipment: Publication of the Petition for Waiver From Fujitsu General Limited and Granting of the Interim Waiver From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

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

**ACTION:** Notice of petition for waiver, granting of application for interim waiver, and request for comments.

**SUMMARY:** This notice announces receipt of and publishes a petition for waiver from Fujitsu General Limited (Fujitsu). The petition for waiver (hereafter "petition") requests a waiver from the U.S. Department of Energy (DOE) test procedure applicable to commercial package air-source central air conditioners and heat pumps. The petition is specific to the Fujitsu variable capacity AIRSTAGE V–II (commercial) multi-split heat pumps. Through this document, DOE: (1) Solicits comments, data, and information with respect to the Fujitsu petition; and (2) announces the grant of an interim waiver to Fujitsu from the existing DOE test procedure for the subject commercial multi-split air conditioners and heat pumps.

**DATES:** DOE will accept comments, data, and information with respect to the Fujitsu petition until, but no later than July 5, 2011.

**ADDRESSES:** You may submit comments, identified by case number "CAC–033," by any of the following methods:

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

• *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include the case number [CAC–033] in the subject line of the message.

• *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/ 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

*Docket:* For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW. (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings and waivers regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *AS_Waiver_Requests@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part B of Title III, which establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309). Part C of Title III provides for a similar energy efficiency program titled "Certain Industrial Equipment," which includes commercial air conditioning equipment, package boilers, water heaters, and other types of commercial equipment.[1] (42 U.S.C. 6311–6317).

Today's notice involves commercial equipment under Part C. Part C specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)).

For commercial package air-conditioning and heating equipment, EPCA provides that "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992." (42 U.S.C. 6314(a)(4)(A)). Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet

[1] For editorial reasons, upon codification in the U.S. Code, Parts B and C were re-designated as Parts A and A–1, respectively.

the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. Table 1 to Title 10 of the Code of Federal Regulations (10 CFR) 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. The cooling capacities of Fujitsu's commercial AIRSTAGE V–II multi-split heat pump products at issue in the waiver petition filed by Fujitsu range from 72,000 Btu/h to 288,000 Btu/h. All of these products are covered by ARI Standard 340/360–2004, which includes products with capacities greater than 65,000 Btu/hour.

DOE's regulations for covered products permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also permits parties submitting a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first. It may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

## II. Petition for Waiver

On April 25, 2011, Fujitsu filed a petition for waiver from the test procedures at 10 CFR 431.96 applicable to commercial package air source central air conditioners and heat pumps, as well as an application for interim waiver. The capacities of the Fujitsu AIRSTAGE V–II multi-split heat pumps range from 72,000Btu/hto 288,000Btu/h. The applicable test procedure is ARI 340/360–2004. Manufacturers are directed to use this test procedure pursuant to Table 1 of 10 CFR 431.96.

Fujitsu seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its AIRSTAGE V–II multi-split heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Fujitsu asserts that the two primary factors that prevent testing of its AIRSTAGE V–II multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test.

*See, e.g.,* 72 FR 17528 (April 9, 2007) (Mitsubishi); 76 FR 19069 (April 6, 2011) (Daikin); 76 FR 19078 (April 6, 2011) (Mitsubishi).

The AIRSTAGE V–II systems have operational characteristics similar to the commercial multi-split products manufactured by Mitsubishi, Samsung, Fujitsu, Sanyo and Daikin. As indicated above, DOE has already granted waivers for these products. The AIRSTAGE V–II system consists of multiple indoor units connected to one or multiple outdoor units. They have the capability of connecting the outdoor unit with up to 45 indoor units selected from 10 chassis types with 43 basic models, giving these systems more than a million installation combinations. Consequently, Fujitsu requested that DOE grant a waiver from the applicable test procedures for its AIRSTAGE V–II product designs.

## III. Application for Interim Waiver

On April 25, 2011, Fujitsualso submitted an application for an interim waiver from the test procedures at 10 CFR 431.96 for its AIRSTAGE V–II equipment. DOE determined that Fujitsu's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Fujitsu might experience absent a favorable determination on its application for an interim waiver. DOE understands, however, that if it did not issue an interim waiver, Fujitsu's products would not be tested and rated for energy consumption in the same manner as equivalent products for which DOE previously granted waivers. Furthermore, DOE has determined that it appears likely that Fujitsu's petition for waiver will be granted and that is desirable for public policy reasons to grant Fujitsu immediate relief pending a determination on the petition for waiver. DOE believes that it is likely Fujitsu's petition for waiver for the new AIRSTAGE V–II multi-split models will be granted because, as noted above, DOE has previously granted a number of waivers for similar product designs. The two principal reasons supporting the grant of the previous waivers also apply to Fujitsu's AIRSTAGE V–II products: (1) Test laboratories cannot test products with so many indoor units; and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. In addition, DOE believes that similar products should be tested and rated for energy consumption on a comparable basis. For these same reasons, DOE also determined that it is desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Therefore, *it is ordered that:*

The application for interim waiver filed by Fujitsu is hereby granted for Fujitsu's AIRSTAGE V–II multi-split heat pumps, subject to the specifications and conditions below.

1. Fujitsu shall not be required to test or rate its AIRSTAGE V–II commercial multi-split products on the basis of the existing test procedures under 10 CFR 431.96, which incorporates by reference ARI 340/360–2004.

2. Fujitsu shall be required to test and rate its AIRSTAGE V–II commercial multi-split products according to the alternate test procedure as set forth in section IV(3), "Alternate test procedure."

The interim waiver applies to the following basic model groups:

Outdoor units, 208/230Vac, 3-phase, 60Hz, Air-Source Heat pump models:

Stand alone models:

AOUA72RLBV and AOUA96RLBV with nominal cooling capacities of 72,000 and 96,000 Btu/hr respectively.

| Add-on system models | (Module models) |
|---|---|
| AOUA144RLBVG | (AOUA72RLBV + AOUA72RLBV) |
| AOUA168RLBVG | (AOUA72RLBV + AOUA96RLBV) |
| AOUA192RLBVG | (AOUA96RLBV + AOUA96RLBV) |
| AOUA216RLBVG | (AOUA72RLBV + AOUA72RLBV + AOUA72RLBV) |
| AOUA240RLBVG | (AOUA72RLBV + AOUA72RLBV + AOUA96RLBV) |
| AOUA288RLBVG | (AOUA96RLBV + AOUA96RLBV + AOUA96RLBV) |

With nominal cooling capacities of 144,000, 168,000, 192,000, 216,000, 240,000 and 288,000 Btu/hr respectively.

*Compatible indoor units for the above listed outdoor units*:

*Compact cassette*:

AUUA7RLAV, AUUA9RLAV, AUUA12RLAV, AUUA14RLAV, AUUA18RLAV and AUUA24RLAV with nominal cooling capacities of 7,500, 9,500, 12,000, 14,000, 18,000 and 24,000 Btu/hr respectively.

*Cassette*:

AUUB30RLAV and AUUB36RLAV with nominal cooling capacities of 30,000 and 36,000 Btu/hr respectively.

*Slim cassette:*

AUUB18RLAV and AUUB24RLAV with nominal cooling capacities of 18,000 and 24,000 Btu/hr respectively.

*Compact wall mounted*:

ASUA7RLAV, ASUE7RLAV, ASUA9RLAV, ASUE9RLAV, ASUA12RLAV, ASUE12RLAV, ASUA14RLAV and ASUE14RLAV with nominal cooling capacities of 7,500, 7,500, 9,500, 9,500, 12,000, 12,000, 14,000 and 14,000 Btu/hr respectively.

*Wall mounted*:

ASUB18RLAV and ASUB24RLAV with nominal cooling capacities of 18,000 and 24,000 Btu/hr respectively.

*Floor/Ceiling (Universal)*:

ABUA12RLAV, ABUA14RLAV, ABUA18RLAV and ABUA24RLAV with nominal cooling capacities of 12,000, 14,000, 18,000, 24,000 Btu/hr respectively.

*Ceiling*:

ABUA30RLAV and ABUA36RLAV with nominal cooling capacities of 30,000 and 36,000 Btu/hr respectively.

*Slim duct*:

ARUL7RLAV, ARUL9RLAV, ARUL12RLAV, ARUL14RLAV and ARUL18RLAV with nominal cooling capacities of 7,500, 9,500, 12,000, 14,000 and 18,000 Btu/hr respectively.

*Middle static pressure duct::*

ARUM24RLAV, ARUM30RLAV, ARUM36RLAV, ARUM48RLAV and ARUM54RLAV with nominal cooling capacities of 24,000, 30,000, 36,000, 48,000 and 54,000 Btu/hr respectively.

*High static pressure duct*:

ARUH36RLAV, ARUH48RLAV, ARUH54RLAV, ARUH60RLAV, ARUH72RLAV, ARUH90RLAV and ARUH96RLAV with nominal cooling capacities of 36,000, 48,000, 60,000, 72,000, 90,000 and 96,000 Btu/hr respectively.

This interim waiver is issued on the condition that the statements, representations, and documents provided by the petitioner are valid. DOE may revoke or modify this interim waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Fujitsu may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of commercial package air conditioners and heat pumps for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR Part 429.

## IV. Alternate Test Procedure

In responses to two petitions for waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis from which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. See 72 FR 17528 and 72 FR 17533. For reasons similar to those published in these prior notices, DOE believes that an alternate test procedure is appropriate in this instance.

DOE understands that existing testing facilities have limited ability to test multiple indoor units simultaneously. This limitation makes it impractical for manufacturers to test the large number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems. We further note that after DOE granted a waiver for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss testing issues and to develop atesting protocol for variable refrigerant flow systems. The committee has developed a test procedure which has been adopted by AHRI—"ANSI/AHRI 1230—2010: Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment" and incorporated into ASHRAE 90.1—2010. The commercial multisplit waivers that DOE has granted to Mitsubishi and several other manufacturers and the alternate test procedure set forth in those waivers are consistent with ANSI/AHRI 1230–2010. The waivers use a definition of "tested combination" that is substantially the same as the definition in ANSI/AHRI 1230–2010. As a result, DOE is considering prescribing ANSI/AHRI 1230–2010 in the subsequent decision and order as the alternate test procedure for this Fujitsu waiver. For the interim waiver, however, DOE will continue to require the use of the alternate test procedure prescribed in the past multisplit waivers.

Therefore, as a condition forgranting this interim waiver to Fujitsu, DOE is including an alternate test procedure similar to those granted to Mitsubishi for its R22 and R410A products. This alternate test procedure will allow Fujitsu to test and make energy efficiency representations for its AIRSTAGE V–II products. DOE has applied a similar alternate test procedure to other waivers for similar residential and commercial central air conditioners and heat pumps manufactured by a number of other manufacturers.

The alternate test procedure developed in conjunction with the Mitsubishi waiver permits Fujitsu to designate a "tested combination" for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to eight indoor units so that it can be tested in available test facilities. (The "tested combination" was originally defined to consist of one outdoor unit matched with between 2 and 5 indoor units. The maximum number of indoor units in a tested combination is increased in this instance from 5 to 8 to account for the fact that these larger-capacity products can accommodate a greater number of indoor units.) The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure as set forth below. The alternate test procedure also allows manufacturers of such products to make valid and consistent representations of energy efficiency for their air-conditioning and heat pump products.

DOE is including the following waiver language in the interim waiver for Fujitsu's AIRSTAGE V–II commercial multi-split water-source heat pump models:

1. Fujitsu shall not be required to test or rate its AIRSTAGE V–II commercial multi-split heat pumps according to the existing test procedures under Table 1 of 10 CFR 431.96, which incorporates by reference the Air-Conditioning and Refrigeration Institute (ARI) Standard 340/360–2004. Fujitsu will be required, however, to test and rate its AIRSTAGE V–II commercial multi-split heat pumps covered in this waiver according to the alternate test procedure as set forth below:

2. *Alternate test procedure.*

(A) Fujitsu shall be required to test the products listed above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Fujitsu shall test a tested combination selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Fujitsu shall make representations concerning the AIRSTAGE V–II products covered in this waiver according to the provisions of subparagraph (C) below.

(B) Tested combination. The term tested combination means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(1) The basic model of a variable refrigerant flow system used as a tested combination shall consist of one outdoor unit, with one or more compressors, that is matched with between two and five indoor units. (For systems with nominal cooling capacities greater than 150,000 Btu/h, as many as eight indoor units may be used, toenable testing of non-ducted indoor unit combinations). For multi-split systems, each of these indoor units shall be designed for individual operation.

(2) The indoor units shall—

(i) Represent the highest sales model family or another indoor model family if the highest sales model family does not provide sufficient capacity (see ii);

(ii) Together, have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit;

(iii) Not, individually, have a nominal cooling capacity that is greater than 50% of the nominal cooling capacity of the outdoor unit;

(iv) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(v) Be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, subpart B, appendix M.

3. *Representations.* In making representations about the energy efficiency of its AIRSTAGE V–II variable capacity multi-split heat pump products for compliance, marketing, or other purposes, Fujitsu must fairly disclose the results of testing under the DOE test procedurein a manner consistent with the provisions outlined below:

(1) For AIRSTAGE V–II combinations tested in accordance with this alternate test procedure, Fujitsumay make representations based on these test results.

(2) For AIRSTAGE V–II combinations that are not tested, Fujitsumay make representations of non-tested combinations at the same energy efficiency level as the tested combination. The outdoor unitmust be the one used in the tested combination. The representations may also be determined by an Alternative Rating Method approved by DOE.

## V. Summary and Request for Comments

Through today's notice, DOE announces receipt of the Fujitsu petition for waiver from the test procedures applicable to Fujitsu's AIRSTAGE V–II commercial multi-split heat pump products. For the reasons articulated above, DOE also grants Fujitsu an interim waiver from those procedures. As part of this notice, DOE publishes Fujitsu's petition for waiver in its entirety. The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Fujitsu is required to follow as a condition of its interim waiver.In this alternate test procedure, DOE is defining a tested combination that Fujitsu could use in lieu of testing all retail combinations of its AIRSTAGE V–II multi-split heat pump products.

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 431.401(d). The contact information for the petitioner is: Masami Kato, Manager, Engineering Attestation Administration Department, Air Conditioner Administration Division, FUJITSU General Limited, 1116 Suenaga, Takatsu-ku, Kawasaki 213–8502, Japan. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on May 26, 2011.

**Kathleen Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.*

April 25, 2011

The Honorable Dr. Henry Kelly

Acting Assistant Secretary and Principal Deputy Assistant Secretary for the Office of Energy Efficiency and Renewable Energy U.S. Department of Energy 1000

Independence Ave, SW., Washington,

DC 20585–0121

Re: Petition for Waiver and Application for Interim Waiver of Test Procedure

Dear Assistant Secretary Kelly:

Pursuant to 10 CFR 431. 401(a)(1), Fujitsu General Limited (FUJITSU) established in Japan, respectfully submits Petition for Waiver from test procedure at 10 CFR 431.96, i.e., ARI Standard 340/360–2004, applicable to commercial package air source central air conditioners and heat pumps for the FUJITSU's AIRSTAGE V–IIsystem, Variable Refrigerant Flow (VRF) Multi-Split Systems, because the basic model contains design characteristics which prevent testing of the basic model according to the prescribed test procedures.

FUJITSU also submits an application for interim waiver of the applicable test procedure for the same systems pursuant to 10 CFR 431. 401(a)(2).

**1. Background**

On June 14, 2004, FUJITSU submitted a Petition for Waiver from the test procedures applicable to its AIRSTAGE product line of residential and light commercial products because the design characteristics of these models prevented testing according to the currently prescribed test procedures.

Specifically, these models can connect an outdoor unit to many more indoor units than the test laboratories can physically test at one time, and it is not practical to test all of the potentially available combinations.

After consideration of all the materials submitted by FUJITSU, DOE classified its AIRSTAGE products as "consumer products" because:

• AIRSTAGE product line at issue involved single-phase equipment for both residential and light commercial use and there was no DOE test procedure for single-phase, small commercial package air-conditioning and heating equipment, no waiver was required for FUJITSU's single-phase commercial AIRSTAGE products.

• Nonetheless, a significant extent, they were for personal use or consumption by individuals (given their frequent residential applications). (42 U.S.C. 6291(1)(B)) Thus, the FUJITSU's AIRSTAGE product line required a waiver from DOE's test procedure for residential central air conditioners and heat pumps, under 10 CFR part 430, subpart B, Appendix M.

On December 17, 2007, DOE granted the requested waiver because there was the problem of being physically unable to test most of the complete systems in a laboratory. The waiver included an alternate test procedure pursuant to which FUJITSU must test and rate the products covered by the waiver. 72 FR 14858 (December17, 2007).

Today, FUJITSUsubmits a Petition for Waiver from the test procedures applicable to its AIRSTAGE product line of commercial (3-phase) VRF multi-split "AIRSTAGE V–II".

**2. The Design Characteristics**

FUJITSU's AIRSTAGE V–II system has the following design characteristics and applications:

• Consists of multi-split, multi-zone units utilizing one ormultiple outdoor units (Add-on system) that have the capability of connecting the outdoor unit with up to 45 indoor units selected from 10 chassis types with 43 basic models (listed in item 3. Identification of the particular basic models for which a waiver is requested), giving these systems more than million installation combinations.

• The compressor is capable of reducing its operating capacity to as little as 10% of its rated capacity. Zone diversity enables AIRSTAGE V–II to have a total connected indoor unit capacity of up to 150% of the capacity of the outdoor unit.

• The operating characteristics allow each indoor unit can be independently controlled and to have a different set temperature and a different mode of operation (i.e. on/off/fan).

• Equip with variable speed indoor and outdoor high efficiency fan motors to precisely control operating pressures and airflow rates.

• Piping connections are made by outdoor unit branch kit, separation tube and/or header. Actual piping length150m maximum allows for application in a wide variety buildings. Height difference between outdoor and indoor units 50m maximum and indoor and indoor units 15m maximum.

• Uses electronically controlled expansion valves to precisely control refrigerant flow, superheat, sub-cooling, pump down functions and even oil flow throughout the system.

**3. Identification of the Particular Basic Models for Which a Waiver Is Requested:**

We seek a waiver from the test procedures for the following AIRSTAGE V–II basic models;

Outdoor units, 208/230Vac, 3-phase, 60Hz, Air-Source Heat pump models:

Standalone models AOUA72RLBV and AOUA96RLBV with nominal cooling capacities of 72,000 and 96,000 Btu/hr respectively.

| Add-on system models | (Module models) |
|---|---|
| AOUA144RLBVG | (AOUA72RLBV + AOUA72RLBV) |
| AOUA168RLBVG | (AOUA72RLBV + AOUA96RLBV) |
| AOUA192RLBVG | (AOUA96RLBV + AOUA96RLBV) |
| AOUA216RLBVG | (AOUA72RLBV + AOUA72RLBV + AOUA72RLBV) |
| AOUA240RLBVG | (AOUA72RLBV + AOUA72RLBV + AOUA96RLBV) |
| AOUA288RLBVG | (AOUA96RLBV + AOUA96RLBV + AOUA96RLBV) |

with nominal cooling capacities of 144,000, 168,000, 192,000, 216,000, 240,000 and 288,000 Btu/hr respectively.

Compatible indoor units for the above listed outdoor units:

Compact cassette:

AUUA7RLAV, AUUA9RLAV, AUUA12RLAV, AUUA14RLAV, AUUA18RLAV and AUUA24RLAV with nominal cooling capacities of 7,500, 9,500, 12,000, 14,000, 18,000 and 24,000 Btu/hr respectively.

Cassette:

AUUB30RLAV and AUUB36RLAV with nominal cooling capacities of 30,000 and 36,000 Btu/hr respectively.

Slim cassette:

AUUB18RLAV and AUUB24RLAV with nominal cooling capacities of 18,000 and 24,000 Btu/hr respectively.

Compact wall mounted:

ASUA7RLAV, ASUE7RLAV, ASUA9RLAV, ASUE9RLAV, ASUA12RLAV, ASUE12RLAV, ASUA14RLAV and ASUE14RLAV with nominal cooling capacities of 7,500, 7,500, 9,500, 9,500, 12,000, 12,000, 14,000 and 14,000 Btu/hr respectively.

Wall mounted:

ASUB18RLAV and ASUB24RLAV with nominal cooling capacities of 18,000 and 24,000 Btu/hr respectively.

Floor/Ceiling (Universal):

ABUA12RLAV, ABUA14RLAV, ABUA18RLAV and ABUA24RLAV with nominal cooling capacities of 12,000, 14,000, 18,000, 24,000 Btu/hr respectively.

Ceiling:

ABUA30RLAV and ABUA36RLAV with nominal cooling capacities of 30,000 and 36,000 Btu/hr respectively.

Slim duct:

ARUL7RLAV, ARUL9RLAV, ARUL12RLAV, ARUL14RLAV and ARUL18RLAV with nominal cooling capacities of 7,500, 9,500, 12,000, 14,000 and 18,000 Btu/hr respectively.

Middle staticpressure duct:

ARUM24RLAV, ARUM30RLAV, ARUM36RLAV, ARUM48RLAV and ARUM54RLAV with nominal cooling capacities of 24,000, 30,000, 36,000, 48,000 and 54,000 Btu/hr respectively.

High staticpressure duct:

ARUH36RLAV, ARUH48RLAV, ARUH54RLAV, ARUH60RLAV, ARUH72RLAV, ARUH90RLAV and ARUH96RLAV with nominal cooling capacities of 36,000, 48,000, 60,000, 72,000, 90,000 and 96,000 Btu/hr respectively.

**4. Design Characteristics Constituting the Grounds for the Petition**

FUJITSU seek a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its AIRSTAGE V–II multi-split contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, FUJITSU assert that the two primary factors that prevent testing of its AIRSTAGE V–II products are the same factors stated in the waivers that DOE granted

to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split systems:

• Testing laboratories cannot test products with so many indoor units; and

• There are too many possible combinations of indoor and outdoor units to test.

Mitsubishi (69 FR 52660, August 27, 2004); Mitsubishi (72 FR 17528, April 9,2007); Samsung (72 FR 71387, Dec. 17, 2007); FUJITSU (72 FR 71383, Dec. 17, 2007); Daikin (73 FR 39680, July 10, 2008); Daikin (74 FR 15955, April 8, 2009); Daikin (74 FR 16193, April 9, 2009); Daikin (74 FR 16373, April 10, 2009); Mitsubishi (74 FR 66311, 66315, December 15, 2009); LG (74 FR66330, December 15, 2009); Daikin (75 FR 22581, April 29, 2010); Daikin (75 FR 25224, May 7, 2010) and Sanyo (75 FR 41845, July 19, 2010)

**5. The Specific Requirements Sought To Be Waived**

FUJITSU seeks a waiver from the test procedures at 10 CFR 431.96 applicable to commercial package air source central air conditioners and heat pumps.

Specially, the applicable test procedure of ARI 340/360–2004 for AIRSTAGE V–II products listed in Item 3. Identification of the particular basic models for which a waiver is requested.

**6. Identity of the Manufacturers of All Other Basic Models:**

The FUJITSU's AIRSTAGE V–II systems incorporate similar design characteristics and configuration as those as VRF Multi-Split Systems being marketed in the United States by Mitsubishi Electric and Electronics USA Inc., Samsung Air Conditioning, Daikin AC (America), Inc., SANYO North America Corp., LG Electronics U.S.A., Inc. and Carrier Corp.

**7. Alternate Test Procedures**

FUJITSU requests that DOE adopt ANSI/AHRI Standard 1230–2010, Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment Standard as an alternate test procedure.

AHRI formed a committee to discuss testing issues and to develop a testing protocol for variable refrigerant flow systems. The committee has developed a test procedure which has been adopted by AHRI—"ANSI/AHRI 1230–2010: Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment" and incorporated into ANSI/ASHRAE/IES Standard 90.1–2010. In addition, ENERGY STAR has adopted AHRI 1230–2010 as test methods for Light Commercial Heating and Cooling Equipment.

The commercial multi-split waivers that DOE has granted to Mitsubishi and several other manufacturers and the alternate test procedure set forth in those waivers are consistent with ANSI/AHRI 1230—2010.The waivers use a definition of "tested combination" that is substantially the same as the definition in ANSI/AHRI 1230—2010. Thus, DOE is considering prescribing ANSI/AHRI 1230—2010 in the subsequent decision and order as the alternate test procedure for these waivers.

Mitsubishi (76 FR 19078, April 6, 2011), Daikin(76 FR 19069, April 6, 2011) and Carrie (76 FR 19759, April 8, 2011).

**8. Application for Interim Waiver**

Pursuant to 10 CFR 431. 401(a)(2), FUJITSU also submits an Application for Interim Waiver of the applicable test procedure requirements for the same systems listed in item 3. Identification of the particular basic models for which a waiver is requested. The basis for Application for Interim Waiver is as follows:

FUJITSU believes that it is likely FUJITSU petition for waiver for the AIRSTAGE V–II multi-split heat pump models will be granted because, as noted item 4. Design characteristics constituting the grounds for the petition, DOE has previously granted a number of waivers for similar product designs based on two principal reasons below;

(1) Test laboratories cannot test equipment with so many indoor units; and

(2) It is impractical to test so many combinations of indoor units with each outdoor unit.

FUJITSU would make it clear that delay in receiving a waiver are providing our competitor Mitsubishi Electric and Electronics USA Inc., Samsung Air Conditioning, Daikin AC (America), Inc., SANYO North America Corp., LG Electronics U.S.A., Inc. and Carrier Corp. with an unfair advantage over our entrance into the market place by not offering a uniform waiver and they show preferential treatment and make us competitive disadvantage in marketing.

As FUJITSU'sAIRSTAGE V–II products are quite similar to these Mitsubishi CITY MULTI products and other manufacturers products, there is no particular reason for DOE to hesitate a waiver to our case.

**9. Confidential Information**

FUJITSU makes no request to DOE regarding the confidential treatment of any information contained in this Petition for Waiver and Application for interim Waiver.

**10. Conclusion**

FUJITSU respectfully requests DOE to grant its Petition for Waiver and Application for Interim Waiver of the applicable test procedure to FUJITSU's AIRSTAGE V–II multi-split heat pumps.

If we can provide further information, or if it would be helpful to discuss any of this matter further, please contact Mr. Roy Kuczera, Senior Vice President, FUJITSU General America, Inc. 353 Route 46 W., Fairfield, N.J. 07004 U.S.A. Phone (973) 575–0380 or undersigned.

Yours very truly,

Masami Kato,

*Manager, Engineering Attestation Administration Department Air Conditioner Administration Division.*

FUJITSU General Limited,

1116 Suenaga, Takatsu-ku, Kawasaki 213–8502, Japan, Phone +81(44)861–7638.

[FR Doc. 2011–13659 Filed 6–1–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Case No. CAC–031]**

### Energy Conservation Program for Certain Commercial and Industrial Equipment: Decision and Order Granting a Waiver to Carrier Corporation From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

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

**ACTION:** Decision and Order.

**SUMMARY:** This notice publishes the U.S. Department of Energy's (DOE) Decision and Order in Case No. CAC–031, which grants Carrier Corporation (Carrier) a waiver from the existing DOE test procedures applicable to commercial package air-source central air conditioners and heat pumps. The waiver is specific to the Carrier Super Modular Multi-System (SMMSi) variable refrigerant flow (VRF) multi-split commercial heat pumps. As a condition of this waiver, Carrier must use the alternate test procedure set forth in this notice to test and rate its SMMSi VRF multi-split commercial heat pumps.

**DATES:** This Decision and Order is effective June 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7796; E-mail: *Elizabeth.Kohl@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4), DOE provides notice of the issuance of the Decision and Order set forth below. In this Decision and Order, DOE grants Carrier a waiver from the existing DOE commercial package air conditioner and heat pump test procedures for its SMMSi VRF multi-split products. Carrier must use the alternate test procedure provided in this notice (American National Standards Institute/Air-Conditioning, Heating and Refrigeration Institute (ANSI/AHRI)

Standard 1230–2010, "Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment") to test and rate the specified models from its SMMSi VRF multi-split commercial heat pumps identified below. The cooling capacities of Carrier's SMMSi VRF multi-split heat pumps at issue in the waiver petition filed by Carrier range from 72,000 Btu/h to 220,000 Btu/h. All of this equipment is covered by ANSI/AHRI Standard 1230–2010, which includes units with capacities from 12,000 Btu/h to 300,000 Btu/h.

Today's decision prohibits Carrier from making any representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and the representations fairly disclose the test results. (42 U.S.C. 6314(d)) Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. *Id.*

Issued in Washington, DC, on May 26, 2011.

**Kathleen Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.*

## Decision and Order

*In the Matter of:* Carrier Corporation (Carrier) (Case No. CAC–031).

### *Background*

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 (42 U.S.C. 6311–6317, as codified) established the Energy Conservation Program for Certain Industrial Equipment, a program covering certain industrial equipment, which includes the SMMSi VRF commercial multi-split heat pumps that are the focus of this notice.[1] Part C specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C 6313), and the authority to require information and reports from manufacturers. 42 U.S.C. 6316. With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992." (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. For commercial air-source heat pumps, DOE adopted ARI Standard 340/360–2004. Table 1 to Title 10 of the Code of Federal Regulations (10 CFR) 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. The cooling capacities of Carrier's SMMSi VRF multi-split heat pumps in its waiver petition range from 72,000 Btu/h to 220,000 Btu/h. The current test procedure for this equipment is ARI Standard 340/360–2004, which includes units with capacities greater than 65,000 Btu/hour.

DOE's regulations for covered products permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also permits parties submitting a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first. It may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On February 16, 2011, Carrier filed a petition for waiver from the test procedure at 10 CFR 431.96 applicable to commercial package air source central air conditioners and heat pumps, as well as an application for interim waiver. The capacities of Carrier's SMMSi VRF multi-split heat pumps range from 72,000 Btu/h to 220,000 Btu/h. The applicable test procedure for commercial air-source heat pumps is ARI 340/360–2004. Manufacturers are directed to use these test procedures pursuant to Table 1 of 10 CFR 431.96.

Carrier seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its SMMSi VRF multi-split heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Carrier asserts that the two primary factors that prevent testing of its multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test. *See, e.g.,* 72 FR 17528 (April 9, 2007) (Mitsubishi); 76 FR 19069 (April 6, 2011) (Carrier); 76 FR 19078 (April 6, 2011) (Mitsubishi).

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

On April 8, 2011, DOE published Carrier's petition for waiver in the **Federal Register,** seeking public comment pursuant to 10 CFR 431.401(b)(1)(iv), and granted the application for interim waiver. 76 FR 19759. DOE received one comment on the Carrier petition, from Carrier, requesting the adoption of ANSI/AHRI 1230–2010 as the alternate test procedure.

*Assertions and Determinations*

Carrier's Petition for Waiver

Carrier seeks a waiver from the DOE test procedures for this product class on the grounds that its SMMSi VRF multi-split commercial heat pumps contain design characteristics that prevent them from being tested using the current DOE test procedures. As stated above, Carrier asserts that the two primary factors that prevent testing of multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi, Fujitsu General Ltd. (Fujitsu), Samsung Air Conditioning (Samsung), Daikin, Sanyo, and LG for similar lines of commercial multi-split air-conditioning systems: (1) Testing laboratories cannot test products with so many indoor units; and (2) there are too many possible combinations of indoor and outdoor unit to test.

The SMMSi systems have operational characteristics similar to the commercial multi-split products manufactured by Mitsubishi, Samsung, LG, Sanyo, Fujitsu and Daikin. As indicated above, DOE has already granted waivers for these products. The SMMSi system consists of multiple indoor units connected to an air-cooled outdoor unit. The indoor units for these products are available in a number of potential configurations, including the following: 4-way cassette, compact 4-way cassette, high-wall, slim ducted, medium static ducted, high static ducted, and ceiling. There are 7 unique outdoor models and 43 unique indoor models. A single outdoor model can be connected to up to 38 indoor units. According to Carrier, the various indoor and outdoor models can be connected in a multitude of configurations, with many thousands of possible combinations. Consequently, Carrier requested that DOE grant a waiver from the applicable test procedures for its SMMSi product designs until a suitable test method can be prescribed.

In responses to two petitions for waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis upon which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI equipment, as well as for its R22 multi-split equipment. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. *See* 72 FR 17528 and 72 FR 17533. The Carrier SMMSi VRF systems have operational characteristics similar to the commercial multi-split products manufactured by Mitsubishi, Samsung, Fujitsu, Daikin, LG, and Sanyo. DOE has granted waivers for these products with a similar alternate test procedure prescribed for Mitsubishi. For reasons similar to those published in these prior notices, DOE believes that an alternate test procedure is appropriate in this instance.

We note that after DOE granted a waiver for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss testing issues and to develop a testing protocol for variable refrigerant flow systems. The committee has developed a test procedure which has been adopted by the Air-Conditioning, Heating and Refrigeration Institute (AHRI) and the "American National Standards Institute (ANSI), ANSI/AHRI 1230—2010: Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment." This test procedure has been incorporated into ASHRAE 90.1—2010. DOE is currently assessing AHRI 1230–2010, with respect to the requirements for test procedures specified by EPCA (42 U.S.C. 6314(a)(4)(B)), and will provide a preliminary determination regarding those test procedures in a future notice of proposed rulemaking.

Carrier's petition proposed that DOE apply ANSI/AHRI Standard 1230–2010 as the alternate test procedure to apply to its SMMSi VRF multi-split heat pump equipment as a condition of its requested waiver. As stated above, the only comment received by DOE regarding the Carrier petition was from Carrier, requesting the adoption of ANSI/AHRI 1230–2010 as the alternate test procedure. The alternate test procedure in the commercial multi-split waivers that DOE granted to Mitsubishi and the other manufacturers listed above is similar to ANSI/AHRI 1230–2010.

DOE issues today's Decision and Order granting Carrier a test procedure waiver for its commercial SMMSi VRF multi-split heat pumps. As a condition of this waiver, Carrier must use ANSI/AHRI 1230–2010 as the alternate test procedure.

Alternate Test Procedure

The alternate test procedure prescribed by DOE in earlier multi-split waivers, including the interim waiver granted to Carrier in response to the current petition, consisted of a definition of a "tested combination" and a prescription for representations. ANSI/AHRI 1230–2010 also includes a definition of "tested combination," and the two definitions are identical in all relevant respects.

The earlier alternate test procedure provides for efficiency rating of a non-tested combination in one of two ways: (1) At an energy efficiency level determined using a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit. ANSI/AHRI 1230–2010 requires an additional test and in this respect is similar to the residential test procedure set forth in 10 CFR part 430, subpart B, appendix M. Multi-split manufacturers must test two or more combinations of indoor units with each outdoor unit. The first system combination is tested using only non-ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all non-ducted indoor units is set equal to the rating of the tested system having all non-ducted indoor units. The second system combination is tested using only ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all ducted indoor units is set equal to the rating of the tested system having all ducted indoor units. The rating given to any untested multi-split system combination having the same outdoor unit and a mix of non-ducted and ducted indoor units is set equal to the average of the ratings for the two required tested combinations.

With regard to the laboratory testing of commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all the indoor units must be subjected the same minimum external static pressure. This requirement enables the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately

and then sum the separate capacities to obtain the overall system capacity. Measuring capacity in this way would require that the test laboratory be equipped with multiple airflow measuring apparatuses. It is unlikely that any test laboratory would be equipped with the necessary number of such apparatuses. Alternatively, the test laboratory could connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit had been measured. However, that approach would be so time-consuming as to be impractical.

For the reasons discussed above, DOE believes Carrier's SMMSi VRF multi-split heat pumps cannot be tested using the procedure prescribed in 10 CFR 431.96 (ARI Standard 340/360–2004) and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(2)–(3). After careful consideration, DOE has decided to prescribe ANSI/AHRI 1230–2010 as the alternate test procedure for Carrier's commercial multi-split products.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Carrier petition for waiver. The FTC staff did not have any objections to issuing a waiver to Carrier.

*Conclusion*

After careful consideration of all the materials submitted by Carrier, the absence of any comments, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver filed by Carrier (Case No. CAC–031) is hereby granted as set forth in the paragraphs below.

(2) Carrier shall not be required to test or rate its SMMSi VRF multi-split heat pump models listed below on the basis of the test procedures cited in 10 CFR 431.96, specifically ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2–3)). Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

Standard model outdoor units:

MMY–MAP0724HT9UL, with a capacity of 72,000 Btu/hr
MMY–MAP0964HT9UL, with a capacity of 96,000 Btu/hr
MMY–MAP1144HT9UL, with a capacity of 114,000 Btu/hr
MMY–AP1444HT9UL, with a capacity of 144,000 Btu/hr
MMY–AP1684HT9UL, with a capacity of 168,000 Btu/hr
MMY–AP1924HT9UL, with a capacity of 192,000 Btu/hr
MMY–AP2284HT9UL, with a capacity of 220,000 Btu/hr

Indoor units, whose capacities range from 7,000 to 48,000 Btu/hr that are compatible with the outdoor units listed above:

4-way cassette
MMU–AP0182H2UL, MMU–AP0212H2UL, MMU–AP0242H2UL, MMU–AP0302H2UL, MMU–AP0362H2UL, and MMU–AP0422H2UL
Compact 4-way cassette
MMU–AP0071MH2UL, MMU–AP0091MH2UL, MMU–AP0121MH2UL, MMU–AP0151MH2UL, and MMU–AP0181MH2UL
Ceiling
MMC–AP0181H2UL, MMC–AP0241H2UL, MMC–AP0361H2UL, and MMC–AP0421H2UL
High-wall
MMK–AP0073H2UL, MMK–AP0093H2UL, MMK–AP0123H2UL, MMK–AP0153H2UL, MMK–AP0183H2UL, and MMK–AP0243H2UL
Slim ducted
MMD–AP0071SPH2UL, MMD–AP0091SPH2UL, MMD–AP0121SPH2UL, MMD–AP0151SPH2UL, and MMD–AP0181SPH2UL
Medium static ducted
MMD–AP0071BH2UL, MMD–AP0091BH2UL, MMD–AP0121BH2UL, MMD–AP0151BH2UL, MMD–AP0181BH2UL, MMD–AP0211BH2UL, MMD–AP0241BH2UL, MMD–AP0301BH2UL, MMD–AP0361BH2UL, MMD–AP0421BH2UL, and MMD–AP0481BH2UL
High static ducted
MMD–AP0151H2UL, MMD–AP0181H2UL, MMD–AP0241H2UL, MMD–AP0301H2UL, MMD–AP0361H2UL, and MMD–AP0481H2UL

(3) *Alternate test procedure.* Carrier is not required to test the products listed in paragraph (2) above according to the test procedure for commercial package air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96 (ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)–(3)), but instead shall use the alternate test procedure ANSI/AHRI 1230–2010.

(4) This waiver shall remain in effect from the date this Decision and Order is issued, consistent with the provisions of 10 CFR 431.401(g).

(5) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify the waiver at any time if it determines that the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(6) This waiver applies only to those basic models set out in Carrier's petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on May 26, 2011.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2011–13654 Filed 6–1–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. DI11–7–000]**

### San Jose Water Company; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI11–7–000.

c. *Date Filed:* May 16, 2011.

d. *Applicant:* San Jose Water Company.

e. *Name of Project:* Micro-Hydro-Turbine-Generator Project.

f. *Location:* The Micro-Hydro-Turbine-Generator Project will be located on a water delivery system pipe, replacing Pressure Reducing Valves, in the town of San Jose, Santa Clara County, California.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Thomas J. Victorine, Director of Operations, San Jose Water Company, 110 W. Santa Clara Street, San Jose, CA 95196–0001; Telephone: (408) 279–7814; FAX: (408) 292–5812; e-mail: *http://www.Tom.victorine@sjwater.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and motions:* June 30, 2011.

All documents should 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 filed with: 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*. Please include the docket number (DI11–7–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The Micro-Hydro-Turbine-Generator Project would consist of a municipal water delivery system in which two Pressure Reducing Valves (PRV), used to control pressure in pipes, would be retrofitted with hydro turbines, to generate 150-kW. The 16-inch pipe, into which the PRVs are placed, carries water from the city's water treatment plant and is part of the San Jose public drinking water system. The water supplied to the water treatment plant comes from three existing storage reservoirs. A transmission line will connect the project to an interstate grid.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may 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. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (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, and/or Motions to Intervene:* Anyone may submit comments, a protest, and 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, and/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 filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 26, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–13681 Filed 6–1–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13381–001]**

### Jonathan and Jayne Chase; Notice of Application Accepted for Filing With the Commission, Intent To Waive Scoping, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions, and Establishing an Expedited Schedule for Processing

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* 13381–001.

c. *Date filed:* July 23, 2010.

d. *Applicant:* Jonathan and Jayne Chase.

e. *Name of Project:* Troy Hydropower Project.

f. *Location:* On the Missisquoi River, in the Town of Troy, Orleans County, Vermont. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Jonathan and Jayne Chase, 361 Goodall Road, Derby Line, VT 05830, (802) 895–2980.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* Due to the small size and particular location of this project and the close coordination with state and federal agencies during the preparation of the application, the 60-day timeframe in 18 CFR 4.34(b) for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions is shortened. Instead, motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions will be due 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice

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 *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the

eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor 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.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The Troy Project would consist of: (1) The existing 20.5-foot-high, 180-foot-long Bakers Falls dam equipped with a 134-foot-long spillway and a 3.33-foot-wide, 4.0-foot-high wastegate located about 5 feet below the dam spillway; (2) an existing 0.61-acre impoundment with a normal water surface elevation of 739.4 feet above mean sea level; (3) an existing intake structure equipped with two 3.33-foot-wide, 4.0-foot-high headgates; (4) an existing forebay with a 2.0-foot-wide, 2.0-foot-high wastegate; (5) an existing 250-foot-long, 6.5-foot-diameter penstock; (6) an existing powerhouse containing one inoperable 600-kilowatt (kW) generating unit; and (7) three existing overhead 6.6-kilovolt 90-foot-long transmission lines.

The applicant proposes to: (1) Rehabilitate or replace the powerhouse; (2) increase the capacity of the inoperable generating unit to 850 kW; and (3) replace the existing transmission lines with three new buried 480 volt 90-foot-long transmission lines. The project would be operated in a run-of-river mode, and would have an annual generation of 1,500 megawatt-hours.

m. Due to the project works already existing and the limited scope of proposed rehabilitation of the project site described above, the applicant's close coordination with federal and state agencies during the preparation of the application, completed studies during pre-filing consultation, and agency recommended preliminary terms and conditions, we intend to waive scoping, shorten the notice filing period, and expedite the exemption process. Based on a review of the application, resource agency consultation letters including the preliminary 30(c) terms and conditions, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, which included a public meeting and site visit, and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project construction and operation on geology and soils, aquatic, terrestrial, threatened and endangered species, recreation and land use, aesthetic, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may 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. For assistance, contact FERC Online Support.

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, contact FERC Online Support.

o. 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, and .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.

All filings must (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (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, recommendations, terms and conditions or prescriptions 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. 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.

p. *Procedural schedule:* The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Notice of the availability of the EA. | October 2011. |

Dated: May 26, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–13683 Filed 6–1–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP09–487–003]**

### High Island Offshore System, L.L.C.; Notice of Compliance Filing

Take notice that on May 16, 2011, High Island Offshore System, L.L.C. (HIOS) filed to comply with the Commission's "Order Approving, as Modified, Uncontested Settlement" issued on April 29, 2011. (135 FERC ¶ 61,105 (2011)). HIOS states it is submitting a revised Stipulation and Agreement as directed, as more fully described in the petition.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

*Protest Date:* 5 p.m. Eastern Time on Thursday, June 2, 2011.

Dated: May 26, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–13679 Filed 6–1–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. NJ11–13–000]**

### Buckeye Power, Inc.; Notice of Filing

Take notice that on May 19, 2011, Buckeye Power, Inc. (Buckeye), in accordance with Rule 203 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure,[1] submitted its Rate Schedule FERC No. 2 containing Buckeye's monthly revenue requirement for its contribution to supply of Reactive Power and Voltage Control from Generation Sources Services, as provided by Buckeye's Greenville generating plant.

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 June 20, 2011.

Dated: May 26, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–13682 Filed 6–1–11; 8:45 am]

**BILLING CODE 6717–01–P**

[1] 18 CFR 385.203 (2010).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP11–484–000]**

### Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

Take notice that on May 18, 2011, Williston Basin Interstate Pipeline Company (Williston Basin) filed a prior notice request for authorization, in accordance with 18 CFR 157.213(b) and 157.216(b) of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act (NGA) and Williston Basin's blanket certificate issued in Docket No. CP82–487–000, *et al.,*[1] for the replacement, operation and abandonment of natural gas storage facilities in Fallon County, Montana. Specifically, Williston Basin proposes to replace three natural gas storage wells and abandon one additional well. Williston Basin states that the estimated cost to construct the facilities is approximately $928,000, all as more fully set forth in the application, which is open to the public for 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 prior notice should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, 1250 West Century Avenue, Bismarck, North Dakota 58503, or telephone (701) 530–1560, or by e-mail *keith.tiggelaar@wbip.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

[1] By the Commission's Order dated February 13, 1985 in Docket Nos. CP82–487–000, *et al.,* (30 FERC ¶ 61,143), Williston Basin was authorized to acquire and operate the interstate pipeline facilities previously owned and operated by MDU Resources Group, Inc. (MDU), its parent company, as well as to provide the certificated service previously provided by MDU, effective January 1, 1985. MDU was originally granted blanket certificate authority in Docket Nos. CP83–1–000, *et al.*

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. Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Dated: May 26, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–13680 Filed 6–1–11; 8:45 am]

**BILLING CODE 6717–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before August 1, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–1039.

*Title:* Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act—Review Process, WT Docket No. 03–128.

*Form No.:* FCC Forms 620 and FCC 621.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit; not-for-profit institutions; and state, local or Tribal government.

*Number of Responses and Respondents:* 12,000 respondents and 12,000 responses.

*Estimated Time per Response:* .5–2 hours.

*Frequency of Response:* On occasion reporting requirement, record keeping requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 154(i), 303(q), 303(r), 309(a), 309(j) and 319, Section 106 of the National Historic Preservation Act (NHPA) of 1966, 16 U.S.C. 470f, and Section 800.14(b) of the rules of the Advisory Council on Historic Preservation, 36 CFR 800.14(b).

*Total Annual Burden:* 49,848 hours.

*Total Annual Cost:* $10,038,600.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* In general there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

*Needs and Uses:* The Commission is seeking OMB approval for a three year extension for the information collection requirements contained in collection 3060–1039. This data is used by the FCC staff, State Historic Preservation Officers (SHPO), Tribal Historic Preservation Officers (THPO) and the Advisory Council of Historic Preservation (ACHP) to take such action as may be necessary to ascertain whether a proposed action may affect historic properties that are listed or eligible for listing on the National Register as directed by Section 106 of the National Historic Preservation Act (NHPA) and the Commission's rules.

FCC Form 620, New Tower (NT) Submission Packet is to be completed by or on behalf of applicants to construct new antenna support structures by or for the use of licensees of the FCC. The form is to be submitted to the State Historic Preservation Office ("SHPO") or to the Tribal Historic Preservation Office ("THPO"), as appropriate, and the Commission before any construction or other installation activities on the site begins. Failure to provide the form and complete the review process under Section 106 of the NHPA prior to beginning construction may violate Section 110(k) of the NHPA and the Commission's rules.

FCC Form 621, Collocation (CO) Submission Packet is to be completed by or on behalf of applicants who wish to collocate an antenna or antennas on an existing communications tower or non-tower structure by or for the use of licensees of the FCC. The form is to be submitted to the State Historic Preservation Office ("SHPO") or to the Tribal Historic Preservation Office ("THPO"), as appropriate, and the Commission before any construction or other installation activities on the site begins. Failure to provide the form and complete the review process under Section 106 of the NHPA prior to beginning construction or other installation activities may violate Section 110(k) of the NHPA and the Commission's rules.

Federal Communications Commission.

**Marlene H. Dortch,**

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

[FR Doc. 2011–13661 Filed 6–1–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 5, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Cathy Williams on (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0805.

*Title:* Section 90.527, Regional Plan Requirements; Section 90.523, Eligibility; Section 90.545(c)(1), Interference Protection Criteria and Section 90.1211, Regional Plan Shared Use of 4.9 GHz.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions and state, local or tribal government.

*Number of Respondents and Responses:* 15,066 respondents, 21,116 responses.

*Estimated Time per Response:* .5 hours–10 hours.

*Frequency of Response:* On occasion and one time reporting requirements and third party disclosure requirements.

*Obligation To Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

*Total Annual Burden:* 61,075 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* No impact(s).

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

*Needs and Uses:* The Commission is seeking from the Office of Management and Budget (OMB) a three year approval for an extension without change for information collection 3060–0805.

The requirements that the Commission wants continued OMB approval is for the following:

Section 90.523 which requires that nongovernmental organizations, which provide services to protect the safety of life, or property, to obtain a written statement from an authorizing state or local government entity to support the nongovernmental organization's application for the assignment of 700 MHz frequencies.

Section 90.545(c)(1) requires that public safety applicants select one of three ways to meet TV/DTV protection requirements: (1) Utilize geographic separation table in the rule; (2) submit an engineering study to justify other separations; or (3) obtain concurrence from the applicable TV/DTV station(s). The engineering study is submitted to the Commission if the channel separation is other than what is stated in rule (table). This will reduce the potential for interference to public reception of the signals of existing TV and DTV broadcast stations transmitting on TV channels 62, 63, 64, 65, 67, 68 or 69.

Section 90.527 states that to prepare the regional plans for the 700 MHz band, the regional planning committees will require input from those entities within the regions that will be eligible to receive licenses under the plans. Entities that seek inclusion in the plan in order to obtain licenses will be third party respondents.

Section 90.1211 the Commission suggested that each 700 MHz region submit a plan on guidelines to be used for sharing the spectrum within the region.

The information will be submitted to the Commission and they will use the information obtained to assign licenses, and also use the information to determine regional spectrum requirements and to develop technical standards. The information will also be used to determine whether prospective licensees will operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate regional requirements or provide for the optimal use of the available frequencies. For information provide to, or exchanged among third parties, the data will be used to establish eligibility.

Federal Communications Commission.

**Marlene H. Dortch,**

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

[FR Doc. 2011–13662 Filed 6–1–11; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public

and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 1, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by e-mail send them to: *PRA@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Benish Shah, Office of Managing Director, (202) 418–7866.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060–0905.

*Title:* Section 18.213, Information to the User (Regulations for RF Lighting Devices).

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities and not-for-profit institutions.

*Number of Respondents:* 3 respondents; 3 responses.

*Estimated Time Per Response:* 1 hour.

*Frequency of Response:* Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154(i), 301, 302, 3030(e), 303(f), 303(r), 304 and 307.

*Total Annual Burden:* 3 hours.

*Total Annual Cost:* $225.

*Privacy Act Impact Assessment:* N/A.

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

*Needs and Uses:* This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to the Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Section 18.213 (for which the Commission is seeking continued OMB approval) requires information on industrial, scientific and medical equipment shall be provided to the user in the instruction manual or on the packaging of an instruction manual is not provided for any type of ISM equipment. (a) The interference potential of the device or system (b) maintenance of the system; (c) simple measures that can be taken by the user to correct interference; and (d) manufacturers of RF lighting devices must provide an advisory statement, either on the product packaging or with other user documentation, similar to the following:

> This product may cause interference to radio equipment and should not be installed near maritime safety communications equipment or other critical navigation or communication equipment operating between 0.45–30 MHz. Variations of this language are permitted provided all the points of the statement are addressed and may be presented in any legible font or text style.

The simple warning label with a short advisory statement will be used by the Commission to determine if an RF lighting device is in compliance with the applicable Commission rules and is capable of producing conducted emissions in the 0.45–30 MHz band.

Federal Communications Commission.

**Marlene H. Dortch,**

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

[FR Doc. 2011–13664 Filed 6–1–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written comments should be submitted on or before July 5, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via e-mail *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via e-mail *PRA@fcc.gov.* and to *Cathy.Williams@fcc.gov* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION;** section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection

request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0787.

*Title:* Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129, FCC 07–223.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or household; Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents and Responses:* 6,454 respondents; 25,041 responses.

*Estimated Time per Response:* 30 minutes (.50 hours) to 10 hours.

*Frequency of Response:* Recordkeeping requirement; Biennial and on occasion reporting requirements; Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefit. The statutory authority for the information collection requirements is found at Sec. 258 [47 U.S.C. 258] Illegal Changes In Subscriber Carrier Selections, Public Law 104–104, 110 Stat. 56.

*Total Annual Burden:* 105,901 hours.

*Total Annual Cost:* $51,285,000.

*Nature and Extent of Confidentiality:* Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, "Informal Complaints and Inquiries." As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 "Informal Complaints and Inquiries," in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

*Privacy Impact Assessment:* Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

*Needs and Uses:* Section 258 of the Telecommunications Act of 1996 directed the Commission to prescribe rules to prevent the unauthorized change by telecommunications carriers of consumers' selections of telecommunications service providers (slamming). On March 17, 2003, the FCC released the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking,* CC Docket No. 94–129, FCC 03–42 (*Third Order on Reconsideration*), in which the Commission revised and clarified certain rules to implement section 258 of the 1996 Act. On May 23, 2003, the Commission released an *Order* (CC Docket No. 94–129, FCC 03–116) clarifying certain aspects of the *Third Order on Reconsideration.* On January 9, 2008, the Commission released the *Fourth Report and Order,* CC Docket No. 94–129, FCC 07–223, revising its requirements concerning verification of a consumer's intent to switch carriers. The *Fourth Report and Order* modified the information collection requirements contained in 64.1120(c)(3)(iii) to provide for verifications to elicit "confirmation that the person on the call understands that a carrier change, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized."

Federal Communications Commission.

**Marlene H. Dortch,**

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

[FR Doc. 2011–13663 Filed 6–1–11; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The following applicants filed AM or FM proposals to change the community of license: 1TV.COM, INC., Station KIKO, Facility ID 72477, BP–20100824ABA, From MIAMI, AZ, To APACHE JUNCTION, AZ; LA NUEVA CADENA RADIO LUZ, INC., Station KLIT, Facility ID 86722, BPED–20110502AET, From DEL RIO, TX, To EAGLE PASS, TX; LOUT, JAMES M, Station NEW, Facility ID 170971, BMPH–20100301ABS, From PINELAND, TX, To BROOKELAND; NETWORK OF GLORY, INC., Station WJRJ, Facility ID 176650, BMPED–20110518AAK, From MONTREAT, NC, To SPRUCE PINE, NC.

**DATES:** The agency must receive comments on or before August 1, 2011.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Tung Bui, 202–418–2700.

**SUPPLEMENTARY INFORMATION:** The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

**James D. Bradshaw,**

*Deputy Chief, Audio Division, Media Bureau.*

[FR Doc. 2011–13745 Filed 6–1–11; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**[Docket No. AS11–17]**

### Appraisal Subcommittee Notice of Meeting

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice of meeting.

*Description:* In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

*Location:* OCC—250 E Street SW, Room 7C/7CA, Washington, DC 20219.

*Date:* June 8, 2011.

*Time:* 10:30 a.m.

*Status:* Open.

*Matters to be Considered:*

*Summary Agenda:* May 11, 2011 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

*Discussion Agenda:*

Appraisal Foundation January 2011 Grant Reimbursement Request
Appraisal Foundation February 2011 Grant Reimbursement Request
Arizona Compliance Review
Kentucky Compliance Review
Nevada Compliance Review

*How to Attend and Observe an ASC meeting:* E-mail your name, organization and contact information to *meetings@asc.gov.* You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. If that Monday is a Federal holiday, then your request must be received 4:30 p.m., ET on the previous Friday. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: May 27, 2011.

**James R. Park,**

*Executive Director.*

[FR Doc. 2011–13749 Filed 6–1–11; 8:45 am]

BILLING CODE P

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**[Docket No. AS11–18]**

### Appraisal Subcommittee Notice of Meeting

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice of Meeting.

*Description:* In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

*Location:* OCC—250 E Street SW, Room 7C/7CA, Washington, DC 20219.

*Date:* June 8, 2011.

*Time:* Immediately following the ASC open session.

*Status:* Closed.

*Matters to be Considered:*

May 11, 2011 minutes—Closed Session, Preliminary discussion of State Compliance Reviews.

Dated: May 27, 2011.

**James R. Park,**

*Executive Director.*

[FR Doc. 2011–13750 Filed 6–1–11; 8:45 am]

BILLING CODE P

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 012128.

*Title:* Southern Africa Agreement A Cooperative Working Agreement.

*Parties:* A.P. Moller Maersk A/S; MSC Mediterranean Shipping Company S.A.; and Safmarine Container Lines N.V.

*Filing Party:* Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006.

*Synopsis:* The agreement authorizes the parties to charter space to and from one another between the Atlantic Coast of the United States and ports in the Bahamas and the Republic of South Africa.

*Agreement No.:* 012129.

*Title:* EUKOR/"K" Line Space Charter Agreement.

*Parties:* EUKOR Car Carriers, Inc. and Kawasaki Kisen Kaisha, Ltd.

*Filing Party:* John P. Meade, Esq., Vice-President; K- Line America, Inc., 6009 Bethlehem Road, Preston, MD 21655.

*Synopsis:* The agreement authorizes the parties to charter space in the trade between the U.S. East Coast and ports in China.

Dated: May 27, 2011.

By Order of the Federal Maritime Commission.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2011–13741 Filed 6–1–11; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreement Filed; Correction

**AGENCY:** Federal Maritime Commission.

*Citation of Previous Notice of Agreements Filed:* 76 FR 30360, May 25, 2011.

*Previous Notice of Agreements:* May 20, 2011.

*Correction to the Notice of Agreements Filed:* Amendment No. 007 for Agreement 011707 was erroneously published. The correct notice should read as follows:

*Agreement No.:* 011707–007.

*Title:* Gulf/South America Discussion Agreement.

*Parties:* BBC Chartering & Logistic GMBH & Co. KG; Industrial Maritime Carriers, LLC; Seaboard Marine, Ltd.; and West Coast Industrial Express, LLC.

*Filing Party:* Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

*Synopsis:* The amendment deletes Associated Transport Line as a party to the agreement.

*Contact Person for More Information:* Karen V. Gregory, Secretary, (202) 523–5725.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2011–13730 Filed 6–1–11; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at

(202) 523–5843 or by e-mail at *OTI@fmc.gov.*

Dunavant Logistics Group, LLC (NVO & OFF), 3797 New Getwell Road, Memphis, TN 38118, *Officers:* Richard W. McDuffie, Manager, (Qualifying Individual), William B. Dunavant, III, Chief Manager, *Application Type:* Business Structure Change.

Em Agent-Export, LLC dba Cargo Logistics Source (NVO & OFF), 1411 NW 84th Avenue, Doral, FL 33129, *Officer:* Elizabeth R. Monserrate, Manager, (Qualifying Individual), *Application Type:* New NVO & OFF License.

Ever Line Logistics Inc (NVO & OFF), 147–35 Farmers Blvd., Suite 208, Jamaica, NY 11434, *Officer:* Caihong Yang, President/Secretary, (Qualifying Individual), *Application Type:* New NVO & OFF License.

Honor Worldwide Logistics LLC (NVO & OFF), 5200 Hollister, #101, Houston, TX 77040, *Officers:* John A. Onorato, President, (Qualifying Individual), Thomas J. Springer, Vice President, *Application Type:* New NVO & OFF.

International First Service USA, Inc. dba Global Wine Logistics, Inc. (NVO & OFF), 197 Route 18 South, Suite 3000, East Brunswick, NJ 08816, *Officer:* Anita McNeil, President/Secretary/Treasurer/Director, (Qualifying Individual), *Application Type:* New NVO & OFF License.

Joma Logistics Inc. (NVO & OFF), 12137 Rhea Drive, #D, Plainfield, IL 60585, *Officers:* Nie Xu, Director, (Qualifying Individual), Kai Tu, CEO, *Application Type:* New NVO & OFF License.

Madi Auto Sales and Shipping, Inc (NVO & OFF), 3691 S.R. #580, Suite A, Oldsmar, FL 34677, *Officers:* Nancy V. Dent, Secretary, (Qualifying Individual), Mohammad A. Madi, President, *Application Type:* Add NVO Service.

Nano Express Corp. (NVO,) 5765 N. Lincoln Avenue, Suite 17, Chicago, IL 60659, *Officers:* Min K. Won, COO, (Qualifying Individual), Otgo M. Ochir, President/Secretary/Treasurer, *Application Type:* New NVO License.

Oceanic Transport, LLC. (NVO), 211 W. 135th Street, Los Angeles, CA 90061, *Officers:* John Ma, Manager/President, (Qualifying Individual), Yen Ma-Chan, Member, *Application Type:* New NVO License.

Peters & May USA, Inc. dba Compass Marine (NVO & OFF), 127 North Walnut Street, Suite 100, Itasca, IL 60143, *Officers:* Anna M. Colavitti, Vice President, (Qualifying Individual), David Holley, President, *Application Type:* QI Change.

Prime Van Lines, Inc. (OFF). 297 Getty Avenue, Paterson, NJ 07503. *Officers:* Robert Lonek, Secretary, (Qualifying Individual), Betty Bendavid, President, *Application Type:* New OFF License.

Sales & Exports Worldwide Corp. (NVO & OFF), 719 Bradfield Road, Houston, TX 77060, *Officers:* Roberto M. Mora, President/Director, (Qualifying Individual), Manuela Flores, Director, *Application Type:* New NVO & OFF License.

Schaefer Trans Inc. (NVO), 580 Atlantic Avenue, East Rockaway, NY 11518, *Officers:* Ana M. Lanfranco, Vice President, (Qualifying Individual), Paul Hoeck, Director/President, *Application Type:* New NVO License.

TMT Logistics Inc (NVO & OFF), 2612 Sanford Avenue, Sanford, FL 32773, *Officers:* Edwin A. Calderon, President/Director/Secretary, (Qualifying Individual), Tania M. Calderon, Vice President, *Application Type:* New NVO & OFF License.

Worldwide Cargo Express, Inc. (OFF), 76 W. 13775 S., Suite 8, Draper, UT 84020, *Officers:* Dana M. Ferguson, President/Secretary, (Qualifying Individual), Necia G. Clark-Mantle, CEO, *Application Type:* New OFF License.

Zai Cargo, Inc. dba Zai Ocean Services dba Zai Container Line (NVO & OFF), 6324 NW 97th Avenue, Doral, FL 33178, *Officer:* Horacio Zapata, President/Treasurer/VP/Secretary, (Qualifying Individual), *Application Type:* New NVO & OFF License.

Dated: May 27, 2011.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2011–13732 Filed 6–1–11; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

| License No. | Name/Address | Date reissued |
|---|---|---|
| 004473F | Maromar International Freight Forwarders Inc. dba Maromar Shipping Line, 8710 NW. 99th Street, Medley, FL 33178. | April 8, 2011. |
| 022056F | Prolog Services Inc. dba PSI Ocean Freight Systems, 5803 Sovereign Drive, Suite 220, Houston, TX 77036 | April 9, 2011. |

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2011–13733 Filed 6–1–11; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 021303N.

Name: Guzal Cargo Express Corp.

Address: 5561 NW. 72nd Avenue, Miami, FL 33166.

Order Published: FR: 5/18/11 (Volume 76, No. 96, Pg. 28780)

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2011–13734 Filed 6–1–11; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

*License Number:* 003628N.

*Name:* South American Freight International, Inc.
*Address:* 9000 W. Flagler Street, Unit 5, Miami, FL 33174.
*Date Revoked:* May 7, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 14804N.
*Name:* Metro Freight Int'l Inc.
*Address:* 161–15 Rockaway Blvd., Suite 301, Jamaica, NY 11434.
*Date Revoked:* May 1, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 018218N.
*Name:* Pacheco Express Shipping Inc.
*Address:* 1570 Webster Avenue, Bronx, NY 10457.
*Date Revoked:* May 8, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 021442F.
*Name:* Ferm Holdings, Inc.
*Address:* 3460 NW 115th Avenue, Miami, FL 33178.
*Date Revoked:* May 1, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 022074F.
*Name:* Stream Links Express, Inc. dba E-Freight Solutions.
*Address:* 16328 Avalon Road, Gardena, CA 90248.
*Date Revoked:* May 6, 2011.
*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2011–13743 Filed 6–1–11; 8:45 am]

**BILLING CODE 6730–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Announcement of the Award of Nine Single-Source Expansion Supplement Grants

**AGENCY:** Office of Refugee Resettlement, ACF, HHS.

**ACTION:** Notice to announce the award of nine single-source expansion supplement grants to the Voluntary Agencies Matching Grant program grantees.

*CFDA Number:* 93.567.

*Statutory Authority:* (A) Section 412 (c)(1)(A) of the Immigration and Nationality Act (INA)(8 U.S.C. 1522(c)(1)(A)), as amended, which authorizes the Director * * *

* * *to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills that are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, education and other services.

(B) Refugee Assistance Extension Act of 1986, Public Law 99–605, Nov 6, 1986, 100 Stat. 3449:

**Section 7. Maintaining Funding Level of Matching Grant Program**

(a) Maintaining Funding Level—Subject to the availability of appropriations, the Director of the Office of Refugee Resettlement shall not reduce the maximum average federal contribution level per refugee in the matching grant program and shall not increase the percentage grantee matching requirement under that program below the level, or above the percentage, in effect under the program for grants in fiscal year 1985.

(b) Matching Grant Program—The "matching grant program" referred to in subsection (a) is the voluntary agency program which is known as the matching grant program and is funded under section 412(c) of the Immigration and Nationality Act.

*Project Period:* February 1, 2011–September 30, 2011.

**SUMMARY:** The Office of Refugee Resettlement (ORR) announces the award of $65,309,200 single-source expansion supplement grants to nine Voluntary Agencies Matching Grant Program cooperative agreement holders. The Voluntary Agencies Matching Grant Program currently operates on a program year from February 1 to January 31. ORR seeks to align the program with the Federal Fiscal Year. The single-source expansion supplement grants will ensure that during the eight-month adjustment period, the ORR-eligible populations will continue to have access to program services without interruption.

Following is a listing of the awardees, their location, and their amount of award:

| Grantee | Location | Amount of expansion supplement |
|---|---|---|
| Church World Service/Immigration & Refugee Program | New York, NY | $4,694,800 |
| Domestic and Foreign Missionary Society of the Protestant Episcopal Church of the U.S.A.. | New York, NY | 3,601,400 |
| Ethiopian Community Development Council/Refugee Resettlement Program | Arlington, VA | 1,782,000 |
| HIAS, Inc. (Hebrew Immigrant Aid Society)/Refugee and Immigrant Services | New York, NY | 1,432,200 |
| International Rescue Committee/Resettlement | New York, NY | 8,173,000 |
| Lutheran Immigration & Refugee Service | Baltimore, MD | 6,670,400 |
| U.S. Conference of Catholic Bishops | Washington, DC | 22,165,000 |
| U.S. Committee for Refugees & Immigrants | Arlington, VA | 12,542,200 |
| World Relief Corporation of National Association of Evangelicals/Refugee & Immigration Programs. | Baltimore, MD | 4,248,200 |

**FOR FURTHER INFORMATION CONTACT:** Mr. Eskinder Negash, Director, Office of Refugee Resettlement, Administration for Children and Families, 901 D Street, SW., Washington, DC 20047. Telephone: 202–401–5388. E-mail: *Eskinder.Negash@acf.hhs.gov.*

Dated: May 25, 2011.

**Eskinder Negash,**

*Director, Office of Refugee Resettlement.*

[FR Doc. 2011–13677 Filed 6–1–11; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. FDA–2011–M–0034, FDA–2011–M–0040, FDA–2011–M–0041, FDA–2011–M–0039, FDA–2011–M–0035, FDA–2011–M–0056, FDA–2011–M–0105, FDA–2011–M–0131, FDA–2011–M–0132, FDA–2011–M–0170, FDA–2011–M–0175, and FDA–2011–M–0198]**

### Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the Agency's Division of Dockets Management.

**ADDRESSES:** Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

**FOR FURTHER INFORMATION CONTACT:** Nicole Wolanski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1650, Silver Spring, MD 20993–0002, 301–796–6570.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that amended 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the Agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov.*

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the FD&C Act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from January 1, 2011, through March 31, 2011. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JANUARY 1, 2011, THROUGH MARCH 31, 2011

| PMA No.<br>Docket No. | Applicant | Trade name | Approval date |
|---|---|---|---|
| P010012 (S230) | Boston Scientific Corp | BOSTON SCIENTIFIC CARDIAC RESYNCHRONIZATION THERAPY DEFIBRILLATORS. | September 16, 2010. |
| FDA–2011–M–0034 | | | |
| P100021 | Medtronic Vascular | MEDTRONIC VASCULAR ENDURANT STENT GRAFT SYSTEM. | December 16, 2010. |
| FDA–2011–M–0040 | | | |
| P100010 | Medtronic Cryocath, LP | ARCTIC FRONT CRYOCATHETER SYSTEM | December 17, 2010. |
| FDA–2011–M–0041 | | | |
| P070014 (S10) | Bard Peripheral Vascular | LIFESTENT AND LIFESTENT LX VASCULAR STENT SYSTEMS. | December 23, 2010. |
| FDA–2011–M–0039 | | | |
| P070026 | Depuy, Inc | CERAMAX CERAMIC HIP SYSTEM | December 23, 2010. |
| FDA–2011–M–0035 | | | |
| P100028 | Cook Medical, Inc | FORMULA BALLOON–EXPANDABLE RENAL STENT SYSTEM. | January 14, 2011. |
| FDA–2011–M–0056 | | | |
| P090013 | Medtronic, Inc | REVO MRI SURESCAN IPG AND PACING SYSTEM | February 8, 2011. |
| FDA–2011–M–0105 | | | |
| P080003 | Hologic, Inc | SELENIA DIMENSIONS 3D SYSTEMS | February 11, 2011. |
| FDA2011–M–0131 | | | |
| P080027 (S1) | OraSure Technologies, Inc | ORAQUICK HCV RAPID ANTIBODY TEST | February 18, 2011. |
| FDA–2011–M–0132 | | | |
| H080005 | Elana, Inc | ELANA SURGICAL KIT HUD | March 10, 2011. |
| FDA–2011–M–0170 | | | |
| P080025 | Medtronic Neuromodulation | MEDTRONIC INTERSTIM THERAPY SYSTEM | March 14, 2011. |
| FDA–2011–M–0175 | | | |

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JANUARY 1, 2011, THROUGH MARCH 31, 2011—Continued

| PMA No. Docket No. | Applicant | Trade name | Approval date |
|---|---|---|---|
| P80020 FDA–2011–M–0198 | Seikagaku Corp | GEL–ONE | March 22, 2011. |

## II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: May 27, 2011.

**Nancy K. Stade,**

*Deputy Director for Policy Center for Devices and Radiological Health.*

[FR Doc. 2011–13692 Filed 6–1–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Neurodegenerative Cardiovascular Disease and Imaging.

*Date:* June 16, 2011.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Neurodevelopment and Plasticity.

*Date:* June 27, 2011.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Laurent Taupenot, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business: AIDS/HIV Innovative Research Applications.

*Date:* July 5, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

*Contact Person:* Kenneth A Roebuck, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business: Dermatology, Rheumatology and Inflammation.

*Date:* July 5, 2011.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Aftab A Ansari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Gene Regulation and Genomics.

*Date:* July 5, 2011.

*Time:* 10 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Richard A Currie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowships: Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

*Date:* July 6–7, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Washington, DC Dupont Circle Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

*Contact Person:* Mary Schueler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–451–0996, *marygs@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Emphysema and Lung Development.

*Date:* July 6–7, 2011.

*Time:* 9 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* George M Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business: Cardiovascular Sciences.

*Date:* July 7–8, 2011.

*Time:* 7:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

*Contact Person:* Lawrence E Boerboom, PhD, Chief, CVRS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowships: Behavioral Neuroscience.

*Date:* July 7–8, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Washington, DC Dupont Circle Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

*Contact Person:* Kristin Kramer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437–0911, *kramerkm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small

Business: Biobehavioral and Behavioral Processes across the Lifespan.

*Date:* July 7, 2011.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Mandarin Oriental, 1330 Maryland Avenue, SW., Washington, DC 20024.

*Contact Person:* Mark Lindner, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *mark.lindner@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business: Clinical Neurophysiology, Devices, Auditory Devices and Neuroprosthesis.

*Date:* July 7–8, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Washington DC, 1150 22nd Street, NW., Washington, DC 20037.

*Contact Person:* Keith Crutcher, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1278, *crutcherka@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 25, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–13669 Filed 6–1–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; N01DA–11–7777: Synthesis and Distribution of Opioid and Related Peptides.

*Date:* June 6, 2011.

*Time:* 2:30 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

*Contact Person:* Jose F. Ruiz, PhD, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, *ruizjf@nida.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 26, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–13667 Filed 6–1–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute On Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; NIDA R13 Conference Grant Review.

*Date:* June 10, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Minna Liang, PhD, Scientific Review Officer, Grants Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4226, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–435–1432, *liangm@nida.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Medical Marijuana Policy Research.

*Date:* June 15, 2011.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Gerald L. McLaughlin, PhD, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4238, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Predictive Animal Models for Smoking Cessation Medications (U54).

*Date:* June 16, 2011.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Scott A. Chen, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4234, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–443–9511, *chensc@mail.nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Blueprint for Neuroscience Research Science Education Award R25).

*Date:* June 28, 2011.

*Time:* 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Gerald L. McLaughlin, PhD, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4238, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; NIDA–K Conflicts.

*Date:* June 29, 2011.

*Time:* 5 p.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

*Contact Person:* Gerald L. McLaughlin, PhD, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4238, MSC

9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Exploring iPS Cells in Substance Abuse Research (R21).

*Date:* June 30, 2011.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Minna Liang, PhD, Scientific Review Officer, Grants Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4226, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–435–1432, *liangm@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 26, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–13665 Filed 6–1–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Technical Conference Support for DPMCDA (8901).

*Date:* June 28, 2011.

*Time:* 9:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 26, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–13660 Filed 6–1–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Xenobiotic and Nutrient Disposition and Action Study Section, June 8, 2011, 8 a.m. to June 8, 2011, 6 p.m., The Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102 which was published in the **Federal Register** on May 24, 2011, 76 FR 30179.

The meeting will be held at the Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102. The meeting date and time remain the same. The meeting is closed to the public.

Dated: May 26, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–13657 Filed 6–1–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Ancillary Studies to Large Ongoing Clinical Projects.

*Date:* June 28, 2011.

*Time:* 8 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Charles H Washabaugh, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892–4872, 301–594–4952, *washabac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 26, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–13656 Filed 6–1–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

*Comments are invited on:* (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology.

**Proposed Project: SAMHSA SOAR Web-Based Data Form—NEW**

In 2009 the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services created a Technical Assistance Center to assist in the implementation of the SSI/SSDI Outreach Access and Recovery (SOAR) effort in all states. SOAR's primary objective is to improve the allowance rate for Social Security Administration (SSA) disability benefits for people who are homeless or at risk of homelessness, and who have serious mental illnesses. SOAR has three main components: Strategic planning for systems change, training for case managers and ongoing technical assistance.

During the SOAR training, the importance of keeping track of SSI/SSDI applications through the process is stressed, since the process is complex and involves several steps. In response to requests from states implementing SOAR, the Technical Assistance Center under SAMHSA's direction developed a web-based data form that case managers can use to track the progress of submitted applications, including decisions received from SSA either on initial application or on appeal. This password-protected web-based data form will be housed on the SOAR Web site (*http://www.prainc.com/soar.*). Use of this form is completely voluntary.

In addition, data from the web-based form can be compiled into reports on decision results and the use of SOAR core components, such as the SSA–1696 Appointment of Representative which allows SSA to communicate directly with the case manager assisting with the application. These reports will be reviewed by agency directors, SOAR state-level leads, and the national SOAR Technical Assistance Center and SOAR national evaluation team to quantify the success of the effort overall and to identify areas where additional technical assistance is needed.

The estimated response burden is as follows:

| Information source | Number of respondents | Responses per respondent | Total responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| SOAR Data Form | 800 | 36 | 28,800 | .25 | 7,200 |

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: May 24, 2011.

**Elaine Parry,**

*Director, Office of Management, Technology and Operations.*

[FR Doc. 2011–13645 Filed 6–1–11; 8:45 am]

**BILLING CODE 4162–20–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: May 24, 2011.

**Elaine Parry,**

*Director, Office of Management, Technology, and Operations, SAMHSA.*

[FR Doc. 2011–13647 Filed 6–1–11; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### New Agency Information Collection Activity Under OMB Review: Security Program for Hazardous Materials Motor Carriers & Shippers

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 30-Day Notice.

**SUMMARY:** This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on February 16, 2011 (76 FR 9041). TSA will provide a voluntary security-related training course to the Hazardous Materials (Hazmat) motor carrier and shipper industry, to include an evaluation for respondents to complete. TSA will use this data to measure the program's effectiveness at achieving its goal of heightened security awareness levels throughout the hazmat motor carrier and shipper industry.

**DATES:** Send your comments by July 5, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** Joanna Johnson, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651; e-mail *TSAPRA@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov*. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### Information Collection Requirement

*Title:* Security Program for Hazardous Materials Motor Carriers & Shippers.

*Type of Request:* New collection.

*OMB Control Number:* Not yet assigned.

*Form(s):* NA.

*Affected Public:* Hazmat Motor Carriers and Shippers.

*Abstract:* TSA's Highway & Motor Carrier Division will be producing a voluntary security-related training course for the Hazmat motor carrier and shipper industry. Participants will be able to choose to attend instructor-led training sessions that TSA will conduct at multiple sites in the United States and provide information to the industry through trade associations, conferences, and stakeholder meetings. Hazmat motor carriers and shippers that are registered with the U.S. Department of Transportation (DOT) will automatically receive the training via CD–ROM and DVD. Companies may also complete the training on-line at the TSA Web site, *http://www.tsa.gov*. After completion of the training program, participants will have the option to complete a course evaluation form to comment on the effectiveness of the training program. The participants who choose to complete the training evaluation form will submit the form via email to a secure Web surveyor tool that is managed at TSA. Participants who attend the classroom training sessions will also be asked to complete an evaluation form on site, which will later be entered into the Web surveyor tool by TSA personnel. TSA will use this data to measure the program's effectiveness at achieving its goal of heightened security awareness levels throughout the hazmat motor carrier and shipper industry.

*Number of Respondents:* 50,000.

*Estimated Annual Burden Hours:* An estimated 16,667 hours annually.

Issued in Arlington, Virginia, on May 26, 2011.

**Joanna Johnson,**

*Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. 2011–13723 Filed 6–1–11; 8:45 am]

BILLING CODE 9110–05–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–212; Extension of an Existing Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I–212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal; OMB Control No. 1615–0018.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 16, 2011, at 76 FR 14419, allowing for a 60-day public comment period. USCIS received no comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 5, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Office, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov,* and OMB

USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0018 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–212; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the information provided on Form I–212 to adjudicate applications filed by aliens requesting consent to reapply for admission to the United States after deportation, removal or departure, as provided under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,272 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,544 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: May 26, 2011.

**Sunday Aigbe,**

*Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2011–13631 Filed 6–1–11; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–508 and Form I–508F, Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review: Forms I–508 and I–508F, Waiver of Rights, Privileges, Exemptions and Immunities; OMB Control No. 1615–0025.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 1, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Forms I–508 and I–508F. Should USCIS decide to revise Form I–508 and Form I–508F we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–508 and Form I–508F.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Office, 20 Massachusetts Avenue, NW., Washington, DC, 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997, or via email at *rfs.regs@dhs.gov.* When submitting comments by email please add the OMB Control Number 1615–0025 in the subject box.

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the 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 collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Waiver of Rights, Privileges, Exemptions and Immunities.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–508 and Form I–508F. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form is used by the USCIS to determine eligibility of an applicant to retain the status of an alien lawfully admitted to the United States for permanent residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

• Form I–508: 1,800 responses at .083 hours (5 minutes) per response, and

• Form I–508F: 200 responses at .083 hours (5 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 166 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: May 27, 2011.

**Sunday Aigbe,**

*Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2011–13630 Filed 6–1–11; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF THE INTERIOR

### Draft WaterSMART Strategic Implementation Plan

**AGENCY:** Office of the Assistant Secretary for Water and Science, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of the Interior's draft WaterSMART (Sustain and Manage America's Resources for Tomorrow) Strategic Implementation Plan (draft Strategic Implementation Plan) identifies activities that will be undertaken to secure and stretch water supplies for use by existing and future generations. Within the draft Strategic Implementation Plan each bureau and office within the Department of the Interior shall identify, coordinate, and integrate its water conservation and sustainable water strategies; identify its information needs; utilize best available science to understand the impacts of climate change on water supplies; and provide Federal leadership and assistance in working toward the goal of sustainable water supplies.

**DATES:** Submit written comments on the draft Strategic Implementation Plan on or before August 1, 2011.

**ADDRESSES:** Send written comments to Mr. David Raff, Bureau of Reclamation, Office of Policy and Administration 84–51000, P.O. Box 25007, Denver, Colorado 80225; or e-mail *WaterSMARTBOR@usbr.gov.*

**FOR FURTHER INFORMATION CONTACT:** David Raff, Bureau of Reclamation, (303) 445–2461, *draff@usbr.gov.*

**SUPPLEMENTARY INFORMATION:** Adequate water supplies are essential to people, the economy, and the environment. The Nation faces an increasing set of water resource challenges. Aging infrastructure, rapid population growth, depletion of groundwater resources, impaired water quality associated with particular land uses and covers, reservoir sedimentation, water needed for human and environmental uses, increased domestic energy development, and climate variability and change all play a role in determining the amount of fresh water available at any given place and time. It is increasingly recognized that water is the primary means through which climate change impacts the earth and people's livelihoods and well being. Water shortage and water-use conflicts have become more commonplace in many areas of the United States.

To ensure that the Department of the Interior is positioned to meet these challenges, the Secretary issued an order (Secretarial Order 3297) in February 2010 establishing the WaterSMART Program. Through the WaterSMART Program the Department of the Interior will work with states, tribes, local governments, and non-governmental organizations to secure and stretch water supplies for use by existing and future generations to benefit people, the economy, the environment, and will identify adaptive measures needed to address climate change and future demands. Within Secretarial Order 3297, Section 5(a) calls for the development of a written plan to implement the WaterSMART Strategy. The draft Strategic Implementation Plan fulfills that requirement and will provide the framework the Department of the Interior will use to provide Federal leadership in moving toward a sustainable water resources future.

The Department of the Interior began developing the draft Strategic Implementation Plan in the summer of 2010. The draft Strategic Implementation Plan was distributed to members of the Advisory Committee on Water Information for review and comment in the fall of 2010. Comments received during that review period have been incorporated within the draft Strategic Implementation Plan. The draft Strategic Implementation Plan includes information from each Department of the Interior bureau and office presented within 11 sections, including:

• Program Coordination.

• The Energy/Water Nexus: Water Used in Energy Production and Energy Used in Water Supply.

• Best Available Science.

• Water Footprint Reduction Program.

• WaterSMART Clearinghouse.

• Promoting Sustainable Water Strategies.

• Evaluation of Needed Information.

• Education and Awareness.

• Collaboration with States and Tribes.

• Planning Efforts.

• The Colorado River Basin Pilot.

The activities identified within the draft Strategic Implementation Plan represent a comprehensive and coordinated approach by which the Federal government can provide leadership in working with other Federal agencies, states, tribes, and local governments as well as non-governmental organizations to achieve a sustainable future.

### 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 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: May 12, 2011.

**Anne J. Castle,**

*Assistant Secretary for Water and Science.*

[FR Doc. 2011–13735 Filed 6–1–11; 8:45 am]

**BILLING CODE 4310–MN–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–ES–2011–N009; 10120–1112–0000–XX]**

### Endangered and Threatened Wildlife and Plants; Notice of Availability of Draft Recovery Plan for *Phyllostegia hispida;* Addendum to the Molokai Plant Cluster Recovery Plan

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability for review and public comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of our draft recovery plan

for *Phyllostegia hispida* under the Endangered Species Act of 1973, as amended (Act). This draft plan is an addendum to the recovery plan for the Molokai Plant Cluster published in September of 1996. This plant species is endemic to the island of Molokai, Hawaii. We request review and comment on our plan from local, State, and Federal agencies and the public. We will also accept any new information on the species' status throughout its range.

**DATES:** We must receive written comments on or before August 1, 2011. However, we will accept information about any species at any time.

**ADDRESSES:** An electronic copy of the draft recovery plan is available at our Web site at *http://endangered.fws.gov/recovery/index.html#plans.* Alternatively, copies of the recovery plan are available from the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850 (phone: 808–792–9400). If you wish to comment on the plan, you may submit your comments in writing by any one of the following methods:

- *U.S. mail:* Field Supervisor, at the above address;
- *Hand-delivery:* Pacific Islands Fish and Wildlife Office at the above address; or
- *Fax:* (808)–792–9580

For additional information about submitting comments, see the "Request for Public Comments" section below.

**FOR FURTHER INFORMATION CONTACT:** Jeff Newman, Deputy Field Supervisor, at the above Honolulu address.

**SUPPLEMENTARY INFORMATION:**

## Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Act (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

## Species History

We listed *Phyllostegia hispida* as an endangered species without critical habitat under the Act on March 17, 2009 (74 FR 11319).

*Phyllostegia hispida* is found only on the island of Molokai. Currently there are 20 wild, mature plants and an unknown number of seedlings nearby, and fewer than 300 outplanted individuals. In addition, there are four small naturally occurring populations—containing one to six seedlings each—that are not located next to mature, parent plants. No known population is entirely protected from the numerous factors threatening the species' recovery, and the species is endangered throughout its range. *P. hispida* is typically found in wet *Metrosideros polymorpha* (ohia)—dominated forest, occurring between 1,112 and 1,280 meters (3,650 and 4,200 feet) elevation.

The greatest threats to all known populations are habitat degradation and predation by feral pigs (*Sus scrofa*); competition with invasive introduced plants; and the negative demographic and genetic consequences of extremely small population size, as well as the consequent vulnerability to extinction through deterministic or stochastic (chance) events. Unidentified caterpillar species may also be a threat to this species.

## Recovery Plan Goals

The objective of a recovery plan is to provide a framework for the recovery of a species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria and actions necessary for us to be able to downlist or delist the species. Recovery plans help guide our recovery efforts by describing actions we consider necessary for the species' conservation, and by estimating time and costs for implementing needed recovery measures.

Needed conservation and recovery activities for *Phyllostigia hispida* include protection, management, and increasing the size of all known wild populations. Continuing survey efforts will focus on identifying any additional populations that may exist but are currently unknown. In order to reduce the potential for extinction due to the catastrophic loss of the small population on a single island, recovery actions will likely require increasing the area occupied by the existing population where space and habitat allow, as well as establishing new populations within the estimated historical range of the species. Threats such as habitat degradation and predation by feral pigs and competition with invasive introduced plants must be sufficiently controlled to allow for this population expansion. The effective management and reintroduction of *P. hispida* will require gaining further knowledge about the life history of the species and the functioning of the ecosystem on which it depends. Therefore, research and monitoring are key components of the recovery strategy. The habitat must be managed for the long-term recovery of *P. hispida* in sufficiently large and self-sustaining populations.

The overall objective of this draft addendum to the Molokai recovery plan is to ensure *Phyllostegia hispida's* long-term conservation and to conduct research necessary to refine recovery criteria so that the species can be downlisted and eventually delisted. Current recovery criteria include: (1) A total of at least 8 populations should be documented on Molokai. Each of these populations must be naturally reproducing, and stable or increasing in number, and threats must be managed so that a minimum of 300 mature individuals are maintained per population. Each population should persist at this level for a minimum of 5 consecutive years. (2) Management plans for each site will be evaluated on a regular basis, and updated to include monitoring to detect demographic or new environmental threats to *P. hispida.* (3) All of the populations that meet criterion 1 above shall be fenced and protected from ungulates, with agreements from conservation partners to maintain those protections in perpetuity. The agreements will also include provisions for invasive introduced plant removal, as appropriate, and adaptive management plans to address herbivory and habitat degradation by feral pigs and caterpillars and other unforeseeable threats. In addition, the agreements will include provisions for maximizing native plant biodiversity in these areas.

As the species meets reclassification and recovery criteria, we will review the species' status and consider the species for reclassification or removal from the Federal List of Endangered and Threatened Wildlife and Plants.

## Request for Public Comments

Section 4(f) of the Act requires us to provide public notice and an opportunity for public review and comment during recovery plan development. It is also our policy to request peer review of recovery plans (July 1, 1994; 59 FR 34270). In an appendix to the approved recovery plan, we will summarize and respond to the issues raised by the public and peer reviewers. Substantive comments may or may not result in changes to the recovery plan; comments regarding recovery plan implementation will be forwarded as appropriate to Federal or other entities so that they can be taken into account during the course of

implementing recovery actions. Responses to individual commenters will not be provided, but we will provide a summary of how we addressed substantive comments in an appendix to the approved recovery plan.

Before we approve the plan, we will consider all comments we receive by the date specified in **DATES**. Methods of submitting comments are in **ADDRESSES**.

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive will be available, by appointment, for public inspection during normal business hours at our office (see **ADDRESSES**).

**Authority:** We developed our draft recovery plan under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 28, 2011.

**Theresa E. Rabot,**

*Acting Regional Director, Pacific Region.*

[FR Doc. 2011–13637 Filed 6–1–11; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Wheatgrass Ridge Wind Project, Fort Hall Indian Reservation, Idaho

**AGENCY:** Bureau of Indian Affairs, Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs (BIA), as Lead Agency, intends to prepare an Environmental Impact Statement (EIS) for the Wheatgrass Ridge Wind Project, Fort Hall Indian Reservation, Idaho. It also announces the beginning of the scoping process to identify potential issues and content for inclusion in the EIS. Construction of the Wheatgrass Ridge Wind Project within the Fort Hall Reservation is subject to BIA approval of a lease and, as proposed, is a major Federal action under the National Environmental Policy Act of 1969 (NEPA), as amended. The information in the EIS will be used to support a decision whether or not to lease Shoshone-Bannock Tribal lands to Wheatgrass Ridge Wind, LLC, for construction, operation, and maintenance of a wind energy facility up to 160 megawatt (MW). The EIS will describe and analyze potential environmental impacts from the proposed action and a range of reasonable alternatives.

**DATES:** Written comments on the scope and implementation of this proposal must arrive by August 1, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers and the Wheatgrass Ridge Wind EIS Project Web site at: *http://www.wheatgrassridgewindeis.info*.

**ADDRESSES:** You may submit comments related to the Wheatgrass Ridge Wind Project EIS by any of the following methods:

- *E-mail: info@WheatgrassRidgeWindEIS.info.*
- *Fax:* (208) 288–6199 (attention: Steve Linhart, POWER Engineers-Wheatgrass Ridge Wind EIS).
- *Mail:* Wheatgrass Ridge Wind EIS, c/o Steve Linhart, POWER Engineers, 2041 South Cobalt Point Way, Meridian, Idaho 83642.
- *In person:* At any EIS public scoping meeting.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Indian Affairs, Northwest Regional Office, Attention Dr. BJ Howerton, Environmental Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4169 Telephone: (503) 231–6749.

**SUPPLEMENTARY INFORMATION:** The EIS will assess the potential environmental impacts of BIA approval of leasing Tribally-owned lands on Fort Hall Indian Reservation near Pocatello, Idaho, to Wheatgrass Ridge Wind, LLC, to construct, operate, and maintain a wind energy facility up to 160 megawatt (MW). Wheatgrass Ridge Wind, LLC, is a company co-owned by Shoshone-Bannock Renewable Energy Development Company (SBRED) and Boreas Wind, LLC. SBRED (a corporation created under Section 17 of the Indian Reorganization Act) is wholly owned by the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, a Federally recognized Indian Tribe organized under the Indian Reorganization Act of 1934 located in the State of Idaho. Boreas is wholly owned by Southern Ute Alternative Energy, LLC (SUAE), a Colorado limited liability company, and was formed for the purpose of pursuing and developing wind power projects. The SUAE is wholly owned by the Southern Ute Indian Tribe and was created to invest in and develop alternative and renewable energy.

The wind energy facility would be located on 100 percent Tribally owned lands in the Bannock Creek District located in the southwestern part of the Fort Hall Indian Reservation. The proposed facility is anticipated to be comprised of between 53 and 106 wind turbines with a hub height of up to 330 feet and a tip height from 300 to 525 feet (tip height is measured from the ground to the tip of the rotor blade when it is perpendicular to the ground), depending on type and model of wind turbine). The facility would include: turbines anchored to concrete foundations approximately 20 feet in diameter surrounded by a gravel area around the exposed turbine foundation of approximately 60 feet; overhead and underground transmission lines; interconnection to adjacent transmission lines (138kV to 345 kV depending on the interconnection point) owned and operation by Idaho Power or PacifiCorp; up to three substations approximately two to five acres each; eight to 10 temporary and two to four permanent meteorological towers, approximately 200 to 315 feet in height, depending on the meteorological data collected; new all-weather gravel access roads approximately 16 feet wide to each turbine location; widening and improvements to existing two-track roads to achieve an approximate 16 to 22 foot wide all-weather gravel access road; temporary lay down yards and hardened crane pads used for erecting turbines; and an operations and maintenance building built on approximately five acres of land within the project area. Wind turbine models in the 1.5–3 MW range from various manufacturers are being considered. The wind project would be located in an area up to approximately 21,355 acres on a land feature known as Wheatgrass Ridge. However, the actual wind turbines, roads, transmission lines, substation(s), and other infrastructure would have a footprint of approximately 250 to 500 acres of land.

The purpose of this project is to: (1) Increase electrical generation to meet existing and future energy demands in the western United States; (2) provide new opportunities for economic development and economic diversification for the Shoshone-Bannock Tribes; (3) provide renewable energy resources for the western United States; (4) promote the self-governance

and self-determination of the Shoshone-Bannock Tribes; and (5) develop the project in an environmentally sound manner that addresses and preserves traditional and cultural practices of the Shoshone-Bannock Tribes. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BIA has identified the following preliminary issues (in no particular order of importance): (1) *Visual resources*—The wind turbines and other project components would be new features on the landscape and visible from various distances, and would be a long-term change to the rural view shed. (2) *Traditional uses*—The proposed project may affect traditional, cultural practices and spiritual uses in the Bannock Creek area by the Shoshone-Bannock Tribal members. (3) *Wildlife*—Projects of this magnitude may have an effect on wildlife. Focal species studies will include migrating and resident raptors, waterfowl, upland game birds and large game species. (4) *Soils*—Project transportation required for the project are located in an area with highly erodible soils. (5) *Wildland Fire*—The project area is subject to repeated wildland fires. (6) *Socioeconomics*—The EIS will evaluate potential impacts on socioeconomic resources, including impacts to range uses, increases and diversification of Tribal revenues and employment opportunities.

The proposed project is expected to create a new revenue source and new employment opportunities on the Tribal lands as well as diversify the economic base for the Shoshone-Bannock Tribes and the Fort Hall Indian Reservation. Local communities such as American Falls, Pocatello, Power County, and the State of Idaho will also likely experience economic benefit. As a new economic opportunity for the Shoshone-Bannock Tribes, there are questions regarding the local economic benefits of the project and overall community support for the project.

### Directions for Submitting Public Comments

Please include your name, return address, and the caption "EIS, Wheatgrass Ridge Wind Project" on the first page of any written comments you submit. You may also submit comments at the public scoping meetings.

### Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** Section of this notice during regular business hours, 8 a.m. to 4.30 p.m., Monday through Friday, except holidays. Before including your address, telephone 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.

**Authority:** This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), and section 46.305 of the Department of the Interior Regulations (42 CFR part 46) implementing the procedural requirements of the NEPA, as amended (42 U.S.C. 4321 *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: May 17, 2011.

**Paul Tsosie,**

*Chief of Staff, Assistant Secretary—Indian Affairs.*

[FR Doc. 2011–13618 Filed 6–1–11; 8:45 am]

**BILLING CODE 4310–W7–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[LLMT921000–11–L13200000–EL0000–P; MTM 101688]**

## Notice of Invitation—Coal Exploration License Application MTM 101688

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Members of the public are hereby invited to participate with the Spring Creek Coal Company on a pro rata cost sharing basis in a program for the exploration of coal deposits owned by the United States of America in lands located in Big Horn County, Montana, encompassing 4,071.45 acres.

**DATES:** Any party seeking to participate in this exploration program must send written notice to both the Bureau of Land Management (BLM) and the Spring Creek Coal Company as provided in the **ADDRESSES** section below no later than July 5, 2011 or 10 calendar days after the last publication of this Notice in the *Sheridan Press* newspaper, whichever is later. This Notice will be published once a week for 2 consecutive weeks in the *Sheridan Press,* Sheridan, Wyoming. Such written notice must refer to serial number MTM 101688.

**ADDRESSES:** The proposed exploration license and plan are available for review from 9 a.m. to 4 p.m., Monday through Friday, in the public room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana.

A written notice to participate in the exploration licenses should be sent to the State Director, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669 and the Spring Creek Coal Company, P.O. Box 67, Decker, Montana 59025–0067.

**FOR FURTHER INFORMATION CONTACT:** Robert Giovanini by telephone at 406–896–5084 or by e-mail at *rgiovani@blm.gov;* or Connie Schaff by telephone at 406–896–5060 or by e-mail at *cschaff@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 exploration activities will be performed pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 201(b), and to the regulations at 43 CFR part 3410. The purpose of the exploration program is to gain additional geologic knowledge of the coal underlying the exploration area for the purpose of assessing the coal resources. The exploration program is fully described and will be conducted pursuant to an exploration license and plan approved by the BLM. The exploration plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate.

The lands to be explored for coal deposits in exploration license MTM 101688 are described as follows:

**Principal Meridian, Montana**

T. 8 S., R. 39 E.,
- Sec. 4, lots 17 thru 24, inclusive;
- Sec. 26, SW¼SW¼ and S½SE¼SW¼;
- Sec. 27, NE¼;SW¼, SW¼NE¼SE¼, NW¼NW¼SE¼, S½NW¼SE¼, and S½SE¼;
- Sec. 35, E½, E½W½, and NW¼NW¼.

T. 9 S., R. 39 E.,
- Sec. 1, lots 1 thru 4, inclusive, W½E½, and W½;
- Sec. 2, E½ and E½W½;
- Sec. 11, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
- Sec. 12, lots 1 thru 4, inclusive, W½E½, NW¼, N½SW¼, and SE¼SW¼.

T. 9 S., R. 40 E.,
- Sec. 6, lots 5 thru 7, inclusive, S½SE¼NW¼, E½SW¼, S½NE¼SE¼, NW¼NW¼SE¼, S½NW¼SE¼, and S½SE¼;

Sec. 7, lots 1 thru 4, inclusive, NE¼, E½W½, N½SE¼, and SW¼SE¼.

Containing 4,071.45 acres.

The Federal coal within the lands described for exploration license MTM 101668 is currently unleased for development of Federal coal reserves.

**Phillip C. Perlewitz,**

*Chief, Branch of Solid Minerals.*

[FR Doc. 2011–13715 Filed 6–1–11; 8:45 am]

**BILLING CODE 4310–DN–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCOF03000 L16100000.DU0000]**

### Notice of Intent To Prepare an Environmental Impact Statement for Domestic Sheep Grazing Allotments for Term Grazing Permit Renewals in the Southern San Luis Valley, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM), La Jara Field Office, La Jara, Colorado, intends to prepare an Environmental Impact Statement (EIS) related to the potential renewal of domestic sheep grazing permits on 12 allotments and 1 cattle grazing allotment in the southern San Luis Valley. This notice initiates the scoping process to solicit public comments and identify issues relevant to the EIS.

**DATES:** Comments on issues may be submitted in writing until July 5, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM Web site at: *http://www.blm.gov/co/st/en/fo/slvplc.html.* In order to be included in the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 30 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

**ADDRESSES:** You may submit comments on issues and planning criteria related to the project by any of the following methods:

- *Web site: http://www.blm.gov/co/st/en/fo/slvplc.html.*
- *E-mail: slvplc_comments@blm.gov.*
- *Fax:* 719–655–2502.
- *Mail:* Saguache Public Lands Office, 46525 Highway 114, Saguache, Colorado 81149, Attention Mark Swinney.

Documents pertinent to this proposal are available at the BLM Saguache Public Lands Office.

**FOR FURTHER INFORMATION CONTACT:** Mark Swinney, Project Manager, telephone 719–655–6105; address 46525 Highway 114, Saguache, Colorado 81149; e-mail *mswinney@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:** Term permits on 12 sheep grazing and 1 cattle grazing allotments located in Conejos and Rio Grande Contus either are or will be expiring in the future. Existing permits allow grazing in or adjacent to Rocky Mountain big horn sheep habitat. In connection with the potential renewal of these permits, the BLM is initiating an EIS. The EIS will analyze domestic sheep grazing in or adjacent to Rocky Mountain bighorn sheep habitat and will consider potential mitigation measures that can be implemented in permit renewals for these 13 allotments. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis in the EIS, including alternatives, and guide the process. Preliminary issues identified by BLM personnel; Federal, state, and local agencies; and other stakeholders, include:

- Potential disease transmission from the interaction between Rocky Mountain bighorn sheep and domestic sheep;
- History, distribution, location, and population trends of bighorn sheep herds in the project area;
- Protection of Threatened and Endangered and Special Status Species;
- Maintaining land health standards;
- Desired future conditions of aquatic, riparian, and terrestrial species and communities; and
- Protection of cultural resources and archaeological values (prehistoric and historic) of the area.

The BLM will utilize and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets.

Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

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.

**Authority:** 40 CFR 1506.6, 40 CFR 1506.10.

**Helen M. Hankins,**

*State Director.*

[FR Doc. 2011–13718 Filed 6–1–11; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLMTB01000–L14300000.ET0000; MTM 79264]**

### Public Land Order No. 7768; Extension of Public Land Order No. 6861; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order extends the withdrawal created by Public Land Order No. 6861 for an additional 20-year period. This extension is necessary to continue protection of Rattler Gulch Limestone Cliffs Area of Critical Environmental Concern for its educational and scientific values.

**DATES:** *Effective Date:* June 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Lonna Sandau, BLM Missoula Field Office, 406–329–1093, or Sandra Ward, BLM Montana State Office, 406–896–5052.

**SUPPLEMENTARY INFORMATION:** The purpose for which the withdrawal was first made requires this extension to continue protection of the educational and scientific values of the Rattler Gulch Limestone Cliffs Area of Critical

Environmental Concern. The withdrawal extended by this order will expire on June 5, 2031, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

**Order**

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6861 (56 FR 26035 (1991)), which withdrew 20 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), but not the mineral leasing laws, to protect the Rattler Gulch Limestone Cliffs Area of Critical Environmental Concern, is hereby extended for an additional 20-year period until June 5, 2031.

**Authority:** 43 CFR 2310.4.

Dated: May 10, 2011.

**Wilma A. Lewis,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 2011–13720 Filed 6–1–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNV9230000 L13100000.FI0000 241A; NVN–086605; 11–08807; MO#4500021013; TAS: 14x1109]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

**SUMMARY:** Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b), the Bureau of Land Management (BLM) received a petition for reinstatement from Bright Sky Energy & Minerals, Inc., for noncompetitive oil and gas lease NVN–086605 on land in Nye County, Nevada. The petition was timely filed and was accompanied by all the rentals due since the lease terminated under the law. No valid lease has 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.* 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 lessee has agreed to the amended lease terms for rental and royalty at the rate of $5 per acre or fraction thereof per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Department for the cost of this **Federal Register** notice. The lessee has met all of the requirements for reinstatement of the lease 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 lease effective February 1, 2011 under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a lease affecting the lands encumbered by the lease to any other interest in the interim.

**Authority:** 43 CFR 3108.2–3(a).

**Gary Johnson,**

*Deputy State Director, Minerals Management.*

[FR Doc. 2011–13725 Filed 6–1–11; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCON040000–L14300000–EU0000; COC–07446101]**

### Notice of Realty Action: Recreation and Public Purposes Act Classification and Conveyance of Public Lands in Garfield County, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty Action.

**SUMMARY:** The Bureau of Land Management (BLM), Colorado River Valley Field Office, examined approximately 62.5 acres of public land in Garfield County, Colorado, and found the land suitable for classification for conveyance under the provisions of the Recreation and Public Purposes Act (R&PP). The City of Glenwood Springs proposes to use the land to expand its existing South Canyon Landfill.

**DATES:** Interested parties may submit written comments regarding the proposed conveyance or classification on or before July 18, 2011.

**ADDRESSES:** Comments should be sent to Steve Bennett, Field Manager, BLM Colorado River Valley Field Office, 2300 River Frontage Road, Silt, Colorado 81652.

**FOR FURTHER INFORMATION CONTACT:** Carole Huey, Realty Specialist, at the address above or by telephone at (970) 876–9023 or e-mail *chuey@blm.gov.*

**SUPPLEMENTARY INFORMATION:** The BLM examined and found the following public land in Garfield County, Colorado, suitable for classification for conveyance to the City of Glenwood Springs under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*), and the Taylor Grazing Act, 43 U.S.C. 315(f) (classification) and Executive Order No. 6910:

**Sixth Principal Meridian**

T. 6 S., R. 90 W.
Sec. 3, NE¼NE¼NE¼SW¼, S½NE¼NE¼SW¼, SE¼NW¼NE¼SW¼, S½NE¼SW¼, W½SW¼NE¼SE¼, W½NW¼NW¼SE¼, SE¼NW¼NW¼SE¼, and S½NW¼SE¼.

The area described contains approximately 62.5 acres in Garfield County.

The land is not needed for any Federal purpose. The conveyance is consistent with the BLM Glenwood Springs Record of Decision and Approved Resource Management Plan dated January 1984, which was revised in 1988, and would be in the public interest.

In accordance with the R&PP Act, the City of Glenwood Springs filed an R&PP application to develop the above described land as an expansion of its South Canyon Landfill.

The City of Glenwood Springs submitted a statement in compliance with the regulations (43 CFR 2741.4(b)) implementing the R&PP Act. The City of Glenwood Springs proposes to use the land to expand its existing landfill. Transferring 62.5 acres under the R&PP Act would allow the City to conform to the State of Colorado's Hazardous Materials and Waste Management Division under Subtitle D. In addition, the City of Glenwood Springs would have full control of surface water on the expanded South Canyon site. The proposed expansion would extend the life of South Canyon Landfill by 20 to 25 years in a cost effective manner.

The conveyance, if issued, will be subject to the provisions of the R&PP Act and applicable regulations, including, but not limited to, 43 CFR Part 2743, and will be subject to the

following terms, conditions, and reservations to the United States:

1. A reservation to the United States for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. Provisions of the R&PP Act and to all applicable regulations.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law, along with all necessary access and exit rights.

4. A right-of-way, across the above-described lands, for a road granted to Telecom Towers LLP, its successors or assigns, by right-of-way COC–61885 pursuant to the Act of October 21, 1976 (31 Stat. 0790, 43 U.S.C. 959).

5. Any other valid rights-of-way that may exist at the time of conveyance.

6. All valid existing rights documented on the official public land records at the time of patent issuance.

An indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or operations on the land.

Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act. 9620(h), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), notice is hereby given that the above-described parcel has been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property.

A limited reversionary provision states that the title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the land in accordance with the approved plan of development within 5 years after the date of conveyance. No portion of the land will under any circumstances revert to the United States if any such portion has been used for solid waste disposal or any other purpose which may result in the disposal, placement, or release of any hazardous substance. Upon publication of this notice in the **Federal Register**, the parcel will be segregated from all other forms of appropriation under the public land laws, including the United States general mining laws, except for conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested persons may submit comments involving the suitability of the land for development as an expansion of the existing City of Glenwood Springs South Canyon Landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with state and Federal programs. Interested persons may submit comments, including notification of any encumbrances or other claims relating to the parcel, regarding the specific use proposed in the application and plan of development, whether the BLM followed appropriate administrative procedures in reaching the decision to convey under the R&PP Act, or any other factors not directly related to the suitability of the land for landfill purposes.

Any adverse comments will be reviewed by the BLM Colorado State Director. In the absence of any adverse comments, this realty action will become effective on August 1, 2011. The land will not be offered for conveyance until after the classification becomes effective.

Only written comments submitted by postal service or overnight mail to the BLM Colorado River Valley Field Office will be considered properly filed. E-mail, facsimile, or telephone comments will not be considered properly filed. Documents related to this action are on file at the BLM Colorado River Valley Field Office at the address above and may be reviewed by the public at their request.

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.

The land will not be available for conveyance until after the classification becomes effective, and until a determination of significance and decision record are signed for the completed Environmental Assessment.

**Authority:** 43 CFR 2741.5.

**Helen M. Hankins,**

*State Director.*

[FR Doc. 2011–13722 Filed 6–1–11; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[L12200000.MV0000/LLCAC05000]**

### Notice of Interim Final Supplementary Rules for Public Lands Managed by the Ukiah Field Office in Lake, Sonoma, Mendocino, Glenn, Colusa, Napa, Marin, Yolo, and Solano Counties, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Interim Final Supplementary Rules.

**SUMMARY:** In accordance with the Record of Decision (ROD) for the Ukiah Field Office Approved Resource Management Plan (RMP), the Bureau of Land Management (BLM), Ukiah Field Office, is issuing interim final supplementary rules and requesting comments. These interim final supplementary rules will apply to public lands within the Ukiah Field Office's jurisdiction. The BLM has determined that these interim final supplementary rules are necessary to enhance visitor safety, protect natural resources, improve recreation opportunities, and protect public health. These rules only implement land use limitations and restrictions that were analyzed in the Ukiah RMP.

**DATES:** The interim final supplementary rules are effective June 2, 2011 and remain in effect until modified or rescinded by the publication of final supplementary rules. We invite comments until August 1, 2011. Comments postmarked or received in person after this date may not be considered in the development of final supplementary rules.

**ADDRESSES:** Mail or hand deliver all comments concerning the interim final supplementary rules to the Bureau of Land Management, Ukiah Field Office, 2550 North State Street, Ukiah, CA 95482. The interim final supplementary rules are available for inspection at the Ukiah Field Office and on the Ukiah Field Office Web site: *http://www.blm.gov/ca/st/en/fo/ukiah.html.*

**FOR FURTHER INFORMATION CONTACT:** Jonna Hildenbrand, Bureau of Land Management, Ukiah Field Office, 2550 North State Street, Ukiah, California 95482, (707) 468–4024, or e-mail: *jhildenb@ca.blm.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures
II. Background
III. Procedural Matters

### I. Public Comment Procedures

You may mail or hand-deliver comments to Jonna Hildenbrand,

Bureau of Land Management, Ukiah Field Office, 2550 North State Street, Ukiah, California 95482, or by e-mail: *jhildenb@ca.blm.gov.* Written comments on the interim final supplementary rules should be specific, confined to issues pertinent to the interim final supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rule that the comment is addressing. The BLM may not consider: (a) Comments that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or (b) comments delivered to an address other than that listed above in **ADDRESSES**.

Comments, including names, addresses, and other contact information of respondents, will be available for public review at the BLM Ukiah Field Office, 2550 North State Street, Ukiah, California 95482, during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## II. Background

The BLM is establishing these interim final supplementary rules under the authority of 43 CFR 8365.1–6, which allows BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources. This provision allows the BLM to issue rules of less than national effect without codifying the rules in the Code of Federal Regulations. These interim final supplementary rules apply to public lands managed by the Ukiah Field Office including Lake, Sonoma, Mendocino, Glenn, Colusa, Napa, Marin, Yolo, and Solano Counties of California.

The overall program authority for the operation of this area is found in the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*). The Ukiah Field Office managed lands are located in Lake, Sonoma, Mendocino, Glenn, Colusa, Napa, Marin, Yolo, and Solano Counties of California.

The BLM finds good cause to publish these supplementary rules on an interim basis, effective the date of publication, because of immediate public health and safety concerns and resource protection needs within the management area. The close proximity to the San Francisco, Oakland, San Jose, and Sacramento Metropolitan areas (10 million people) along with the closures of nearby Federal and state off-highway vehicle (OHV) areas has increased visitation and the duration of visits in the planning area. Incidents of vehicle use off routes, unsafe target shooting practices, and illegal fireworks have led to visitor conflicts, public safety issues, and resource degradation.

Additionally, the BLM recently acquired a coastal property that offers public access to coastal bluffs and the beach, which has increased year round visitation. This property contains habitat for federally-listed threatened and endangered species and borders the Garcia River, a component of an anadromous watershed containing the federally-threatened Central California Coast coho salmon, Northern California steelhead Evolutionary Significant Units (ESU), and California Coastal Chinook salmon ESU. Several BLM special status species are located within the area, and these interim final supplementary rules are needed to conserve critical habitat. The portion of these rules that are specific to the Areas of Critical Environmental Concern (ACEC) are intended to protect the relevant and important resource values within these units and the portion specific to the Scattered Tracts management areas address public health and safety concerns and resource protection.

Maps identifying the management areas and boundaries are included in the RMP. The RMP, including the maps, will be available for inspection at the Ukiah Field Office. All of the interim final supplementary rules implement management decisions in the RMP.

The Ukiah Field Office has taken the following steps to involve the public in developing the plan decisions that provide a basis for the interim final supplementary rules which are consistent with the management direction established in the RMP:

- Scoping for the Ukiah RMP in August, 2004 including public meetings held throughout the planning area.
- 90-day comment period for the Draft RMP/Environmental Impact Statement (EIS) ending December 15, 2009. Five general public meetings and one meeting specifically for local Indian tribes were held.
- A determination by the State of California that the RMP would not conflict with State or local plans or the California Coastal Management Program.
- All public comments were summarized and addressed in the Final EIS and all decisions related to the rules were analyzed in the Final EIS.

Based on extensive prior public participation in the planning process that provided the basis for these rules and immediate public safety and resource protection concerns, including vehicle use off designated routes, unsafe and illegal target shooting, illegal fireworks usage, and protection of resource values (special status species, cultural resources, etc.), the BLM finds good cause to issue these rules as interim final supplementary rules. The public is now invited to provide additional comments on the interim final supplementary rules. See the **DATES** and **ADDRESSES** sections for information on submitting comments.

## III. Procedural Matters

### *Executive Order 12866, Regulatory Planning and Review*

These interim final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These interim final supplementary rules will not have an annual effect of $100 million or more on the economy or adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. These interim final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The interim final supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligation of their recipients; nor do they raise novel legal or policy issues. These rules merely contain rules of conduct for public use of a limited portion of the public lands in California in order to protect human health, safety, and the environment.

### *Clarity of the Interim Final Supplementary Rules*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these interim final supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the interim final supplementary rules clearly stated?

(2) Do the interim final supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the interim final supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the interim final supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the interim final supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final supplementary rules? How could this description be more helpful in making the interim final supplementary rules easier to understand?

Please send any comments you have on the clarity of the interim final supplementary rules to the address specified in **ADDRESSES** section.

*National Environmental Policy Act*

These interim final supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). However, they are a component of a larger plan (Ukiah Field Office RMP) that constitutes a major Federal action. The BLM prepared a Draft and Final EIS on the RMP which includes a complete analysis of each decision corresponding to the interim final supplementary rules. This Draft and Final EIS and the ROD are on file and available to the public at the address specified in **ADDRESSES** above. The Final EIS and ROD are available at the website specified in **ADDRESSES** above.

*Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended (5 U.S.C. 601–612) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The interim final supplementary rules merely establish rules of conduct for public recreational use of a limited area of public lands. Therefore, the BLM has determined under the RFA that these interim final supplementary rules would not have a significant economic impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

These interim final supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). These interim final supplementary rules merely contain rules of conduct for recreational use of a limited area of public lands and do not affect commercial or business activities of any kind.

*Unfunded Mandates Reform Act*

These interim final supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do they have a significant or unique effect on state, local, or tribal governments or the private sector. The interim final supplementary rules have no effect on state, local, or tribal governments and do not impose any requirements on any of these entities. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

*Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

The interim final supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The interim final supplementary rules do not address property rights in any form and do not cause the impairment of one's property rights. Therefore, the BLM has determined that these interim final supplementary rules would not cause a "taking" of private property or require further discussion of takings implications under this Executive Order.

*Executive Order 13132, Federalism*

The interim final supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The interim final supplementary rules affect land in the State of California, and do not conflict with any California state law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that these interim final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

*Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the California State Office of the BLM has determined that these interim final supplementary rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, the BLM has found that these interim final supplementary rules do not include policies that have tribal implications. The interim final supplementary rules do not affect lands held for the benefit of Indians, Aleuts, or Eskimos, Indian resources, or tribal property rights. To comply with Executive Orders regarding government-to-government relations with Native Americans, formal and informal contacts were made with 26 federally recognized tribes and 2 non-recognized tribal governments with interests in the affected area. The tribes were provided with a copy of the Draft RMP. In addition, the BLM contacted each tribe directly requesting comments and assessing the need for a tribal briefing. The tribes expressed no concerns about the RMP or the decisions related to these interim final supplementary rules.

*Information Quality Act*

The Information Quality Act (Section 515 of Pub. L. 106–554) requires Federal agencies to maintain adequate quality, objectivity, utility, and integrity of the information that they disseminate. In developing these interim final supplementary rules, the BLM did not conduct or use a study, experiment, or survey or disseminate any information in developing these supplementary rules.

*Executive Order 13211, Effects on the Nation's Energy Supply*

These supplementary rules do not comprise a "significant energy action," as defined in Executive Order 13211. The rules will not have a significant adverse effect on supplies, production, or consumption and have no connection with energy policy.

*Paperwork Reduction Act*

These interim final supplementary rules do not contain information collection requirements that the Office of Management and Budget must

approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*Author*

The principal author of these interim final supplementary rules is Rich Burns, Field Manager, Ukiah Field Office.

For the reasons stated in the preamble and under the authority for supplementary rules found in 43 CFR 8365.1–6, the California State Director, Bureau of Land Management, issues supplementary rules, effective on an interim final basis upon publication, for public lands managed by the Ukiah Field Office to read as follows:

**Supplementary Rules for All Lands Within the Jurisdiction of the Ukiah Field Office**

*Section 1. Definitions*

*Camping* means the use of tents or shelters of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or mooring of a vessel, or parking a vehicle or trailer for the apparent purpose of overnight occupancy.

*Cave Resource* means any material or substance occurring naturally in caves on Federal lands, such as animal or plant material, paleontological deposits, sediments, minerals, speleogens (bedrock formations), and speleothems (secondary mineral deposits).

*Cliff* means a very steep, vertical, or overhanging face of rock or earth.

*Climbing* means all-gear assisted and non-gear assisted ascent or descent, especially by using both hands and feet.

*Firearm* means any device designed to be used as a weapon, from which a projectile by the force of an explosion or other form of combustion is expelled through a barrel.

*Fireworks* means a device for producing a striking display by the combustion of explosive or flammable compositions including those that are defined as legal for sale within the State of California, also known as "safe and sane" fireworks.

*Frontcountry* means an area that represents a broad mix of uses.

*Hang Gliding and Paragliding* means the use of all non-motorized, foot-launched aircraft.

*Hunting* means the pursuit of game by any person in possession of a current legal California hunting license in accordance with State law.

*Motorized Vehicle* means any vehicle which is self-propelled or propelled by electric or gas power.

*Middlecountry* means an area generally with naturally appearing landscape except for obvious primitive roads.

*Off-Highway Vehicle (OHV)* means any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain.

*Open Fire* means all fire with an exposed flame such as wood fires, campfires, charcoal barbecues, or camp stoves outside of fire rings in designated developed recreational sites.

*Projectile* means any bullet, ball, sabot, slug, buckshot, arrow, or other object which is propelled from a device.

*Recreation Opportunity Spectrum (ROS)* means a method of inventorying existing physical and social conditions.

*Shooting* means the discharge of a weapon for non-hunting purposes.

*Sink Hole* means a natural depression or hole in the surface topography caused by the removal of soil or bedrock by water.

*Street Legal Vehicle* means any vehicle subject to registration under the California Vehicle Code (Section 4000 (a)).

*Weapon* means any firearm, crossbow, bow and arrow, air or gas paintball gun, fireworks or explosive device capable of propelling a projectile by means of an explosion, compressed air, or by string or spring.

*Section 2 Interim Final Supplementary Rules of Conduct*

The following rules apply year round to all visitors unless explicitly stated otherwise in a particular rule. The following persons are exempt from these interim final supplementary rules: any Federal, state, or local officer or employee acting in the scope of their duties; members of any organized rescue or fire-fighting force in performance of an official duty; and any person whose activities are authorized in writing by the BLM Authorized Officer.

*a. The following rules apply to all lands within the Ukiah Field Office jurisdiction.*

1. All routes are closed to motorized vehicles unless designated as open within the RMP.

2. The use or possession of fireworks is prohibited.

3. Hunting is allowed except where specifically prohibited.

*b. The following rules apply to all designated Scattered Tracts Management Areas within the jurisdiction of the Ukiah Field Office.*

The use of weapons is prohibited except when hunting.

Common to All Scattered Tracts Management Areas

Scattered Tracts are BLM lands covered by the RMP but are not a part of any other management area. Scattered tracts total approximately 47,000 acres and are found in every county containing public lands within the Ukiah Field Office area of jurisdiction.

*c. The following rules apply to all designated Areas of Critical Environmental Concern (ACEC) within the jurisdiction of the Ukiah Field Office.*

Common to All ACECs

It is prohibited to deface, remove, or destroy plants or their parts, soil, rocks, minerals, or cave resources within the following ACECs: Lost Valley—40 acres (Cow Mountain Management Area, Mendocino County), Knoxville—5,236 acres (Knoxville Management Area, Lake County), Walker Ridge—3,685 acres (Indian Valley Management Area, Lake and Colusa counties), Indian Valley Brodiaea—100 acres (Indian Valley Management Area, Lake County), Cache Creek—11,228 acres (Cache Creek Management Area, Lake, Colusa, and Yolo counties), Northern California Chaparral Research Area—11,206 acres (Cache Creek Management Area, Lake County), Cedar Roughs Research Natural Area—6,350 acres (Scattered Tracts Management Area, Napa County), Stornetta—887 acres (Stornetta Management Area, Mendocino County), Black Forest—247 acres (Scattered Tracts Management Area, Lake County), and The Cedars of Sonoma County—1,500 acres (Scattered Tracts Management Area, Sonoma County).

*d. The following rules apply to Cache Creek, Cow Mountain, Knoxville, Geysers, Indian Valley, Black Forest, the Cedars of Sonoma County and Stornetta Management Areas within the jurisdiction of the Ukiah Field Office.*

Cache Creek Management Area

Cache Creek encompasses approximately 73,000 acres of public land. It includes the Cache Creek Natural Area and the Cache Creek Wilderness Area. Cowboy Camp is a developed recreation site comprised of a day use area, an overnight parking area, and the group camp site. High Bridge is a developed recreation site comprised of a day use area and overnight parking area.

1. Use of weapons is prohibited except when hunting.

2. Defacing, removing, or destroying plants or their parts, soil, rocks, minerals, or cave resources is prohibited.

3. Vehicles and horses are allowed in the Cowboy Camp group camp site from the third Saturday in April through the third Saturday in November.

4. Camping is limited to the group camp site within the Cowboy Camp developed recreation site.

5. High Bridge and Cowboy Camp developed recreation sites are open for day use only from one-half hour before sunrise to one-half hour after sunset except for long-term parking for overnight backcountry visitors.

Cow Mountain Management Area

Cow Mountain is comprised of approximately 51,000 acres of public lands and divided into North and South Cow Mountain. The use of weapons is limited to designated shooting areas except when hunting.

South Cow Mountain OHV (Portion) of Cow Mountain Management Area

1. Operating a motorized vehicle is prohibited within South Cow Mountain OHV unit during wet weather closures (resulting from accumulated precipitation) or administrative closures.

2. Wet Weather Closure—During periods of seasonal and severe storms (beginning October 1)—When total annual precipitation exceeds four inches and at least one-half inch of precipitation has fallen in 24 hours or one inch in 72 hours the authorized officer has determined that motorized vehicles will cause considerable adverse effects upon the soil, vegetation, wildlife, and other resources. Pursuant to 43 CFR 8341.2 the Ukiah Field Office will implement a temporary closure of all routes to all motorized vehicles for a minimum of three days. Once the area has been closed, a field inspection will be completed prior to reopening and daily thereafter to determine suitability of road and trail conditions. When field observations show that motorized vehicle use can occur without causing considerable adverse effects as described in 43 CFR 8341.2, the temporary closure will be terminated. Exceptions to this temporary closure will only be granted to private landowners who need to access their property. Landowners will only be able to access their property via the most direct route and are not allowed to use a motorized vehicle on any other part of the South Cow Mountain OHV Area. Consistent with 43 CFR 8341.2 this policy is subject to modification due to changing resource conditions.

North Cow Mountain (Portion) of Cow Mountain Management Area

1. The Mendo-Rock Road, Water Tank Spur, Willow Creek Road, Rifle Range Road, Radio Tower Road, Rifle Range Maintenance Spur, and Mayacmas Campground Road are open year round and limited to street legal vehicles only.

2. Routes open during general deer season and limited to street legal vehicles only are Firebreak #1, McClure Creek Ridge Spur, McClure Creek Spur, Sulphur Creek Spur, and Sulphur Creek Ridge Spur.

3. All other routes are closed year round to street legal and motorized vehicles.

Knoxville Management Area

The Knoxville area contains approximately 24,000 acres of public lands.

1. Use of weapons is prohibited except when legally hunting.

2. Adams Ridge Road is open to street legal vehicles during general deer season.

Geysers Management Area

Geysers encompasses about 7,100 acres that are public lands.

Shooting is allowed in ROS zone Middlecountry.

Indian Valley Management Area

Shooting is allowed in ROS zones Middlecountry and Frontcountry.

Black Forest/The Cedars of Sonoma County Management Area

Black Forest includes 247 acres on Mount Konocti just south of Soda Bay on Clear Lake.

The Cedars of Sonoma County includes 1,500 acres and is located two miles northeast of the Austin Creek State Recreation Area. The rules identified for the Black Forest and Cedars of Sonoma are consistent with the management direction established in the RMP.

1. Motorized vehicle use is prohibited.

2. Climbing on the cliffs is prohibited.

3. Use of weapons is prohibited except when hunting.

Stornetta Management Area

The 1,132-acre Stornetta Management Area is located along the Mendocino County coastline just north of the town of Point Arena. The rules identified for the Stornetta Management Area are consistent with the management direction established in the RMP.

1. Use of weapons is prohibited.

2. Hunting is prohibited.

3. Hang gliding or paragliding is prohibited.

4. Camping is prohibited.

5. The area is open for day use only from one-half hour before sunrise to one-half hour after sunset.

6. Use of motorized vehicles is prohibited.

7. Beach access is permitted only at the designated access trails marked by signs. These locations are mile marker 1.4 and 2.3 from the Highway 1 and Lighthouse Road intersection.

8. Climbing on cliffs and in or around sink holes is prohibited.

9. Dogs must be on a leash no longer than six feet or otherwise physically restricted at all times.

10. Open fires are prohibited.

11. Cutting or collecting firewood is prohibited.

12. Feeding or harassing wildlife is prohibited.

13. Physical removal of any resources including, but not limited to, vegetation, animals, driftwood, and shells, is prohibited.

*Section 3 Penalties*

Any person who violates any of these interim final supplementary rules may be tried before a U.S. Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. 43 U.S.C. 1733(a); 43 CFR 8360.0–7 and 2932.57(b). Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

**A. Este Stifel,**

*Acting Associate State Director.*

[FR Doc. 2011–13728 Filed 6–1–11; 8:45 am]

BILLING CODE 4310–40–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–701]**

## In the Matter of Certain Electronic Devices, Including Mobile Phones, Portable Music Players, and Computers; Notice of Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest and Bonding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on March 25, 2011, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

**FOR FURTHER INFORMATION CONTACT:** Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International

Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on January 28, 2010, based on a complaint filed by Nokia Corporation of Finland and Nokia Inc. of White Plains, New York (collectively, "Nokia"). 75 FR 4583–4 (Jan. 28, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including mobile phones, portable music players, and computers by reason of infringement of various claims of United States Patent Nos. 6,895,256 ("the '256 patent"); 6,518,957 ("the '957 patent"); 6,714,091 ("the '091 patent"); 6,834,181 ("the '181 patent"); 6,924,789 ("the '789 patent"); 6,073,036 (subsequently terminated from the investigation); and 6,262,735 (subsequently terminated from the investigation). The complaint named Apple Inc. of Cupertino, California as respondent.

On March 25, 2011, the ALJ issued his final ID, finding no violation of section 337 by Respondents with respect to any of the asserted claims of the asserted patents. Specifically, the ALJ found that the accused products do not infringe the asserted claims of the '091 patent. The ALJ also found that none of the cited references rendered the asserted claims obvious and that the claims were not invalid under 35 U.S.C. 112 for failure to disclose the best mode. Regarding the '181 patent, the ALJ found that the accused products do not infringe its asserted claims. The ALJ also found that none of the cited references anticipated or rendered obvious the asserted claims. With respect to the '256 patent, the ALJ found that the accused products failed to literally infringe the asserted claims and failed to infringe under the doctrine of equivalents. The ALJ also found that the asserted claims were not invalid for obviousness and were not rendered unenforceable due to inequitable conduct. Concerning the '789 patent, the ALJ found that the accused products met all the limitations of asserted claim 5 under the doctrine of equivalents. The ALJ, however, found that the prior act anticipated and rendered asserted claim 5 invalid. The ALJ concluded that an industry exists within the United States that practices the '789 patent but that a domestic industry does not exist with respect to the '091 patent, the '181 patent and the '256 patent as required by 19 U.S.C. 1337(a)(2) and (3).

On April 11, 2011, Nokia and the Commission investigative attorney ("IA") filed petitions for review of the ID. That same day, Apple filed a contingent petition for review of the ID. On April 19, 2011, Nokia and Apple filed responses to the various petitions and contingent petition for review. The IA filed a combined response to Nokia's petition for review and Apple's contingent petition for review on April 22, 2011.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the findings related to the '181 patent and the '256 patent. The Commission has determined not to review any issues related to the '957 patent, the '091 patent, and the '789 patent, and terminates those patents from the investigation.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Does the claim term "multiple acoustic cavities each having an acoustic volume" recited in asserted claim 1 of the '181 patent require each "acoustic cavity" to possess any particular acoustic property?

2. Assuming that the '181 patent does not require each "acoustic cavity" to possess any particular acoustic properties, does Marqvardsen (International Publication No. WO 00/38475) anticipate asserted claim 1? *See* ID at 117.

3. Do the accused products satisfy the "Integrated Mobile Terminal Processor" limitation recited in asserted claim 1 of the '256 patent under the ALJ's construction of that limitation? *See Markman* Order (Order No. 53) at 41–43.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested

parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding with respect to the '256 patent and the '181 patent. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the patent expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Thursday, June 9, 2011. Reply submissions must be filed no later than the close of business on Thursday, June 16, 2011. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

Issued: May 26, 2011.

By order of the Commission.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–13619 Filed 6–1–11; 8:45 am]

**BILLING CODE P**

## FEDERAL TRADE COMMISSION

**[File No. 101 0021]**

## Irving Oil Limited and Irving Oil Terminals Inc.; Analysis of Proposed Agreement Containing 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 June 27, 2011.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write AIrving Exxon Mobil, File No. 101 0021" on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/irvingexxonmobil,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Friedman (202–326–3316), FTC, Bureau of Competition, 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 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 May 26, 2011), 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.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 10, 2011. Write "Irving Exxon Mobil, File No. 101 0021" on your comment. Your comment B including your name and your state B will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone'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. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do 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 FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/southwesthealthalliances* by following the instructions on the Web-based form. If this Notice appears at *http://*

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

*www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write "Irving Exxon Mobil, File No. 101 0021" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that 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 on or before June 27, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

**Analysis of Agreement Containing Consent Order To Aid Public Comment**

**I. Introduction**

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Irving Oil Terminals Inc. and Irving Oil Limited (collectively "Irving"). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects resulting from Irving and Irving Oil Transportation Company LLC's proposed acquisition of certain petroleum products storage and transportation assets located in Maine from ExxonMobil Oil Corporation ("ExxonMobil"). As originally structured, Irving would have acquired ExxonMobil's petroleum products terminals located in South Portland and Bangor, Maine, as well as ExxonMobil's intrastate pipeline connecting these two terminals.

The Commission's Complaint alleges that this, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the gasoline and distillates terminaling services markets in the South Portland and Bangor/Penobscot Bay areas of Maine. To resolve these competitive concerns raised by the original transaction, Irving will divest its acquisition rights to the ExxonMobil Bangor terminal and intrastate pipeline as well as fifty percent of ExxonMobil's South Portland terminal to Buckeye Partners, L.P. and its affiliate Buckeye Pipe Line Holdings, L.P. (collectively "Buckeye"), retaining only the right to acquire the remaining fifty percent of the South Portland terminal. Buckeye and Irving will form a joint venture that will purchase ExxonMobil's South Portland terminal. Under this proposal, Buckeye alone will manage and operate this terminal on behalf of the Irving-Buckeye joint venture. Buckeye will purchase and operate ExxonMobil's pipeline and Bangor terminal. Irving will enter into a throughput agreement with Buckeye at each of the petroleum products terminals. The Commission's Consent Agreement is intended to assure that Irving does not control the pipeline and terminals and does not threaten Buckeye's ability to competitively operate the South Portland terminal.

The proposed Consent Agreement, to govern for a period of ten years, prevents Irving from acquiring additional share in, managing, or operating the South Portland terminal absent the Commission's prior approval. The Consent Agreement also requires prior notification should Irving acquire any form of additional ownership interests in petroleum products transportation or storage assets located in Maine. Finally, the proposed Consent Agreement imposes firewall and monitor provisions to prevent Irving from accessing and using confidential customer information. This remedy preserves competition in the gasoline and distillates terminaling services markets in both the Bangor/Penobscot Bay and South Portland areas of Maine.

The proposed Consent Agreement has been placed on the public record for thirty days to allow interested persons to comment. Comments received during this period will become part of the public record. After thirty days, the Commission will review the proposed Consent Agreement and the comments received, and will decide whether to withdraw the proposed Consent Agreement, modify it, or make it final.

**II. Parties**

Irving is a family-owned business based in St. John, New Brunswick, Canada. Irving owns the largest refinery in Canada and owns, in whole or in part, six terminals in Canada and the northeastern United States. Irving supplies branded and unbranded petroleum products in Canada and throughout New England to third-party distributors, retailers, various other re-sellers, and governmental and commercial end users. Irving also owns retail travel plazas that sell gasoline and diesel petroleum products. In Maine, Irving owns a terminal in Searsport and co-owns a terminal with CITGO Petroleum Corporation in South Portland.

ExxonMobil is the world's largest publicly traded petroleum and natural gas company worldwide. ExxonMobil produces crude oil and natural gas, refines petroleum products, and transports and sells crude oil, natural gas, and refined petroleum products. ExxonMobil owns terminals located in South Portland and Bangor, Maine, as well as an intrastate pipeline that connects these two terminals.

Buckeye is a publicly traded partnership that owns and operates one of the largest independent refined petroleum products pipeline systems in the United States. Buckeye owns or manages approximately 7,500 miles of pipeline, owns approximately 70 active refined petroleum products terminals, and markets refined petroleum products in some of the geographic areas served by its pipeline and terminal operations. Buckeye is not a party to the original transaction and does not currently market, transport, or store light petroleum products in Maine.

**III. The Relevant Markets and Their Structure**

The Commission's Complaint alleges that the original transaction would pose substantial antitrust concerns in the gasoline and distillates terminaling services markets in the Bangor/Penobscot Bay and South Portland areas of Maine.

Terminals generally consist of a number of storage tanks and loading "racks" that pump fuels into tanker trucks for further delivery. Terminals are specialized facilities connected to one or more fuel supply sources, have the capacity to store fuel shipments, and must be configured properly to distribute the fuel to customers. Light petroleum products terminals are specialized facilities that receive gasoline, diesel fuel, heating oil, kerosene, and jet fuel, among other products, by pipeline, by water, by rail, or directly from refinery production. These products are stored or redistributed by pipeline, water, rail, or truck. Terminals are critical to the sale and distribution of transportation fuels and perform value-added services, such as handling and injection of motor fuel additives (including ethanol) as petroleum products are redelivered across the truck rack. Terminaling services consist of a cluster of services

related to the delivery, storage, and throughput of petroleum products.

The Commission's Complaint alleges that relevant product markets within which to analyze the original transaction are gasoline terminaling services and distillates terminaling services. Terminals that store gasoline compete in both the gasoline terminaling services and distillates terminaling services markets. However, terminals that store only distillates compete only in the distillates terminaling services market. Two relevant geographic areas in which to analyze the effects of the original transaction on gasoline and distillates terminaling services are the Bangor/Penobscot Bay and the South Portland areas of Maine. The Bangor/Penobscot Bay area encompasses the state of Maine north of Waterville, including Bangor, Searsport, and Bucksport, Maine. The South Portland area encompasses the state of Maine south of Waterville, including South Portland.

Irving and ExxonMobil are two of three firms that can independently offer gasoline terminaling services in the Bangor/Penobscot Bay area and two of four in the South Portland area. Additionally, these companies are two of four firms independently offering distillates terminaling services in the Bangor/Penobscot Bay area and two of six in the South Portland area. The original acquisition would have substantially increased concentration in each of the above markets.

*IV. Effects of the Acquisition*

The Commission believes that the original transaction would eliminate the actual, direct, and substantial competition between Irving and ExxonMobil, both: (1) Increasing the likelihood that Irving would unilaterally exercise market power in the Bangor/Penobscot Bay area gasoline terminaling services market, and (2) enhancing the likelihood of collusion or coordinated interaction among the remaining firms in the South Portland area gasoline terminaling services market and both the Bangor/Penobscot Bay and South Portland area distillates terminaling services markets.

The ExxonMobil pipeline, which originates in South Portland and whose only access point is the ExxonMobil South Portland terminal, supplies the terminals located in Bangor, Maine. Marine vessels supply the remaining Bangor/Penobscot Bay area terminals as well as the South Portland area terminals. Because importing gasoline from Europe on large cargo vessels is generally less costly than shipping it from domestic ports on smaller barges, most Maine suppliers import gasoline from outside the United States.

Controlling the South Portland terminal would allow Irving to control the price of bulk gasoline deliveries to the Bangor/Penobscot Bay area. Irving would likely be able unilaterally to raise the price for or restrict the availability of gasoline terminaling services in the Bangor/Penobscot Bay area and raise gasoline prices to customers served from this area's terminals. Additionally, the original transaction would provide Irving with sufficient terminal capacity to restrict alternative suppliers' ability to import gasoline into South Portland area terminals at current prices. The ability to restrict these imports would allow Irving to increase the cost of gasoline supplied to retail stations and other consumers from the Bangor/Penobscot Bay area terminals.

Because the ExxonMobil assets carry both gasoline and distillates, the original transaction also would likely enhance the likelihood of coordination to raise fees for and reduce the quality and availability of terminaling services among the remaining firms that could independently provide distillates terminaling services in the Bangor/Penobscot Bay area and provide gasoline or distillates terminaling services in South Portland area.

Entry into the gasoline and distillates terminaling services markets in the Bangor/Penobscot Bay and South Portland areas would not be timely, likely, or sufficient to prevent or defeat the anticompetitive effects of the original transaction. Entering these markets is costly, difficult, and unlikely due to, among other things, the difficulty of obtaining regulatory approvals and the presence of excess terminal capacity in both markets. Facing substantial sunk costs, a new entrant would not likely invest in a new terminal in these markets, all of which presently have sufficient capacity. Further, due to the significant cost and limited ability to attract large customer volumes, a terminal that cannot currently store gasoline would not likely reconfigure its tanks to store gasoline in response to a small but significant price increase in gasoline terminaling services.

*V. The Proposed Consent Agreement*

For a duration of ten years, the proposed Consent Agreement addresses the competitive risk that Irving may: (1) Gain control of the Irving-Buckeye South Portland terminal in the future, allowing it to restrict supply to the Bangor terminals and imports into South Portland, or (2) access and use confidential business information in an anticompetitive manner. By imposing certain prior approval and prior notice provisions on Irving and prohibiting it from taking certain actions, the remedy ensures that the Irving-Buckeye South Portland terminal will continue to operate independently of, and in competition with, other Maine terminals. Further, by imposing firewall and monitor provisions, the remedy guards against Irving accessing and using confidential information in an anticompetitive manner.

Pursuant to the proposed Consent Agreement, Irving must obtain Commission approval prior to: (1) Acting as either manager of the Irving-Buckeye joint venture or operator of the joint venture terminal, with a limited sixty-day exception in the event that Buckeye is unable to serve in either capacity, (2) acquiring additional storage or throughput rights at the joint venture terminal, with a limited one-month exception, or ownership interests in the joint venture, or (3) modifying its assignment agreements with Buckeye. Paragraphs II.B. and II.E. Further, the Consent Agreement requires Irving to notify the Commission prior to acquiring any form of additional ownership interests in petroleum products transportation or storage assets located in Maine. Paragraph IV. Additionally, the Consent Agreement prohibits Irving from taking action that would discourage or prevent Buckeye from offering third parties terms equal to Irving's terms at the South Portland terminal. Paragraph II.C.

The proposed Consent Agreement also prohibits Irving from receiving, sharing, or using any confidential business information with limited exceptions that allow the information to be shared where required and only to those with written agreements to maintain the information's confidentiality. Paragraph III. To this end, the Consent Agreement places an enforcement obligation on Irving and provides for the appointment of a monitor to oversee the implementation of these provisions. Paragraphs III.C. and V. Such a monitor will review Irving's compliance proposals and assist in evaluating their adequacy. Paragraph V.

The proposed Consent Agreement includes the standard divestiture trustee provision pursuant to which the Commission may appoint a trustee if Irving fails to effectuate the divestiture in a manner that complies with the Consent Order. Paragraph VI.A. In this case, the trustee will divest the assets, subject to Commission prior approval, within twelve months. Paragraph VI.E.

*VI. Opportunity for Public Comment*

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the comments received, and decide whether to withdraw from the proposed Consent Agreement, modify it, or make it final. By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to inform and invite public comment on the proposed Consent Agreement, including the proposed remedy, and to aid the Commission in its determination of whether to make the proposed Consent Agreement final. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement, nor to modify the terms of the proposed Consent Agreement in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2011–13598 Filed 6–1–11; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF JUSTICE

### Office of Community Oriented Policing Services

**[OMB Number 1103–NEW]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection under Review: COPS Police and Communities Together (PACT) 360 Needs Assessment Survey.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The emergency proposed information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 30 days for public comment until July 5, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ashley Hoornstra, Department of Justice Office of Community Oriented Policing Services, 145 N St., NE., Washington, DC 20530.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Ashley Hoornstra at 202–616–1314 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the 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.

**Overview of This Information Collection**

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

(2) *Title of the Form/Collection:* COPS Police and Communities Together (PACT) 360 Needs Assessment Survey.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement agencies; Secondary: Substance abuse prevention and treatment providers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 300 respondents will complete the form within 15 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75 total burden hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room 2E–808, Washington, DC 20530.

**Jerri Murray,**

*Department Deputy Clearance Officer, PRA, Department of Justice.*

[FR Doc. 2011–13625 Filed 6–1–11; 8:45 am]

**BILLING CODE 4410–AT–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[OMB Number 1117–NEW]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested: Red Ribbon Week Patch; DEA Form 316 and 316A

**ACTION:** 60-Day Notice of Information Collection under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 1, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Eric Akers, Chief, Demand Reduction Section, 8701 Morrissette Drive, Springfield, VA 22152; (202) 307–7988.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your

comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of Information Collection 1117–00XX**

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

(2) *Title of the Form/Collection:* Intent to Participate and Red Ribbon Week Patch Activity Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

*Form Number:* DEA Form 316 and DEA Form 316A.

*Component:* Office of Congressional and Public Affairs, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Boy Scout and Girl Scout Troop Leaders.

*Other:* None.

*Abstract:* The Drug Enforcement Administration requests the information from Boy/Girl Scout Troop Leaders that express an interest in participating in DEA Red Ribbon Week Activities. This information is then used to mail patches to participants indicating completion of the suggested activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 200 persons will complete the DEA–316, Intent to Participate, at 2 minutes per form, for an annual burden of 6.6 hours. It is estimated that 500 persons will complete the DEA–316Aa, Red Ribbon Week Patch Activity Report, at 10 minutes per form, for an annual burden of 83.3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 89.9 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–808, Washington, DC 20530.

**Jerri Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2011–13626 Filed 6–1–11; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–0064]**

### Agency Information Collection Activities: Existing Collection; Comment Requested; Extension and Revision of Existing Collection; Annual Parole Survey, Annual Probation Survey, and Annual Probation Survey (Short Form)

**ACTION:** 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Office of Justice Programs, will be submitting the following information collection to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was published in the **Federal Register** Volume 76, Number 59, pages 17152–17153 on March 28, 2011, allowing for a 60 day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments until July 5, 2011. This process is in accordance with 5 CFR 1320.10.

Written comments and/or suggestions concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Tom Bonczar at 202–616–3615 or the DOJ Desk Officer at 202–395–3176.

Written comments and/or suggestions regarding the items contained in this notice, especially the request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Annual Parole Survey, Annual Probation Survey, and Annual Probation Survey (Short Form).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms: CJ–7 Annual Parole Survey; CJ–8 Annual Probation Survey; and CJ–8A Annual Probation Survey (Short Form). Corrections Statistics Program, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State Departments of Corrections or state probation and parole authority. Others: The Federal Bureau of Prisons, city and county courts and probation offices for which a central reporting authority does not exist. For the CJ–7 form, 55 central reporters (two state jurisdictions in California and one each from the remaining states, the District of Columbia, the Federal system, and one local authority) responsible for keeping records on parolees will be asked to

provide information for the following categories:

(a) As of January 1, 2011 and December 31, 2011, the number of adult parolees under their jurisdiction;

(b) The number of adults entering parole during 2011 through discretionary release from prison, mandatory release from prison, a term of supervised release, or reinstatement of parole;

(c) The number of adults released from parole during 2011 through completion, incarceration, treatment, absconder status, transfer to another parole jurisdiction, or death;

(d) Whether the number of adult parolees reported as of December 31, 2011 represents individuals or cases;

(e) Whether adult parolees supervised out of state have been included in the total number of parolees on December 31, 2011, and the number of adult parolees supervised out of state;

(f) As of December 31, 2011, the number of adult parolees under their jurisdiction with a sentence of more than one year, or a year or less;

(g) As of December 31, 2011, the number of male and female adult parolees under their jurisdiction;

(h) As of December 31, 2011, the number of white (not of Hispanic origin), black or African American (not of Hispanic origin), Hispanic or Latino, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, two or more races, or the number of adult parolees for which no information was available;

(i) As of December 31, 2011, the number of adult parolees who had as their most serious offense a sex offense, other violent offense, or a property, drug, weapons, or other offense;

(j) As of December 31, 2011, the number of adult parolees under their jurisdiction who were active, only have financial conditions remaining, inactive, absconders, or supervised out of state;

(k) As of December 31, 2011, the number of adult parolees under their jurisdiction who were supervised following a discretionary release, a mandatory release, a term of supervised release, a special conditional release, or other type of release from prison;

(l) Whether the parole authority supervised any adult parolees who were also on probation supervision, held in local jails, prisons, or an ICE holding facility, and the number of adult parolees held in each on December 31, 2011;

(m) Whether the parole authority used a Global Positioning System (GPS) to track the location of adult parolees, and if so, the number of adult parolees tracked using GPS on December 31, 2011, and of the number of those parolees tracked using GPS, the number who were sex offenders.

For the CJ–8 form, 306 reporters (one from each state, the District of Columbia, and the Federal system; and 254 from local authorities) responsible for keeping records on probations will be asked to provide information for the following categories:

(a) As of January 1, 2011 and December 31, 2011, the number of adult probationers under their jurisdiction;

(b) The number of adults entering probation during 2011 with and without a sentence to incarceration;

(c) The number of adults discharged from probation during 2011 through completion, incarceration, treatment, absconder status, a detainer or warrant, transfer to another parole jurisdiction, and death;

(d) Whether the number of adult probationers reported as of December 31, 2011 represents individuals or cases;

(e) As of December 31, 2011, the number of male and female adult probationers under their jurisdiction;

(f) As of December 31, 2011, the number of white (not of Hispanic origin), black or African American (not of Hispanic origin), Hispanic or Latino, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, two or more races, or the number of adult probationers for which no information was available;

(g) As of December 31, 2011, the number of adult probationers under their jurisdiction who were sentenced for a felony, misdemeanor, or other offense type;

(h) As of December 31, 2011, the number of adult probationers who had as their most serious offense domestic violence, sex offense, other violent offense, property offense, drug law violation, driving while intoxicated or under the influence of alcohol or drugs, other traffic offense, or other offense;

(i) Whether adult probationers supervised out of state have been included in the total number of probationers on December 31, 2011, and the number of adult probationers supervised out of state;

(j) Whether the probation authority collects data on the number of adult probationers who had previously served a sentence to prison for the same offense for which they are on probation;

(k) Whether the probation authority supervised adult probationers who were also on parole supervision, any probationers held in local jails, prisons, community-based correctional facilities, or an ICE holding facility, and the number of adult probationers held in each on December 31, 2011;

(l) As of December 31, 2011, the number of adult probationers under their jurisdiction who had entered probation with a direct sentence to probation, a split sentence to probation, a suspended sentence to incarceration, or a suspended imposition of sentence;

(m) As of December 31, 2011, the number of adult probationers under their jurisdiction who were active, in a residential or other treatment program, only had financial conditions remaining, inactive, absconders, those on warrant status, or supervised out of state;

(n) Whether the probation authority used a Global Positioning System (GPS) to track the location of adult probationers, and if so, the number of adult probationers tracked using GPS on December 31, 2011, and of the number of those probationers tracked using GPS, the number who were sex offenders.

For the CJ–8A form, 160 reporters (from local authorities) responsible for keeping records on probationers will be asked to provide information for the following categories:

(a) As of January 1, 2011 and December 31, 2011, the number of adult probationers under their jurisdiction;

(b) The number of adults entering probation and discharged from probation during 2011;

(c) Whether the number of adult probationers reported as of December 31, 2011 represents individuals or cases;

(d) As of December 31, 2011, the number of male and female adult probationers under their jurisdiction;

(e) As of December 31, 2011, the number of adult probationers under their jurisdiction who were sentenced for a felony, misdemeanor, or other offense type.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 521 respondents each taking an average of 1.19 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 622 annual burden hours.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N. Street, NE., Suite 2E–

502, Washington, DC 20530 (phone: 514–4304).

**Jerri Murray,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. 2011–13599 Filed 6–1–11; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP (OJP) Docket No. 1555]**

### Meeting of the Office of Justice Programs' Science Advisory Board

**AGENCY:** Office of Justice Programs (OJP), Justice.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice announces a forthcoming meeting of OJP's Science Advisory Board ("Board"). *General Function of the Board:* The Board is chartered to provide OJP, a component of the Department of Justice, with valuable advice in the areas of science and statistics for the purpose of enhancing the overall impact and performance of its programs and activities in criminal and juvenile justice. To this end, the Board has designated five (5) subcommittees: National Institute of Justice (NIJ); Bureau of Justice Statistics (BJS); Office of Juvenile Justice and Delinquency Prevention (OJJDP); Quality and Protection of Science; and Evidence Translation/Integration.

**DATES:** The meeting will take place on Wednesday, June 22, 2011, from 10:30 a.m. to 4:30 p.m. ET.

**ADDRESSES:** The meeting will take place at the Crystal City Marriott at 1999 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Marlene Beckman, Designated Federal Officer (DFO), Office of the Assistant Attorney General, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531; Phone: (202) 616–3562 [**Note:** this is not a toll-free number]; E-mail: *marlene.beckman@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:** This meeting is being convened to brief the Assistant Attorney General for the Office of Justice Programs, and the Board members, on the initial meetings of the subcommittees and to discuss their recommended priorities. The final agenda is subject to adjustment, but it is anticipated that there will be a morning and an afternoon session, with a break for lunch. These sessions will likely include briefings of the subcommittees' activities and discussion of future Board actions and priorities.

This meeting is open to the public. Members of the public who wish to attend this meeting must register with Marlene Beckman at the above address at least seven (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. Persons interested in communicating with the Board should submit their written comments to the DFO, as the time available will not allow the public to directly address the Board at the meeting. Anyone requiring special accommodations should notify Ms. Beckman at least seven (7) days in advance of the meeting.

**Marlene Beckman,**

*Counsel and Science Advisory Board DFO, Office of the Assistant Attorney General, Office of Justice Programs.*

[FR Doc. 2011–13633 Filed 6–1–11; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to Section 33105(c) of Title 49, United States Code, and the delegation of the Secretary of Transportation's responsibilities under that Act to the Administrator of the Federal Highway Administration (49 CFR, section 501.2(a)(9)), the Secretary of Labor has certified to the Administrator and published this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967 = 100) increased 110.0 percent from its 1984 annual average of 311.1 to its 2010 annual average of 653.198.

Signed at Washington, DC, on the 25th day of May 2011.

**Hilda L. Solis,**

*Secretary of Labor.*

[FR Doc. 2011–13746 Filed 6–1–11; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to Section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94–283, 2 U.S.C. 441a(c)(2)(B)(ii)), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the Federal Register that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 342.21 percent from its 1974 annual average of 147.7 to its 2010 annual average of 653.198 and that it increased 23.2 percent from its 2001 annual average of 530.4 to its 2010 annual average of 653.198. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 342.2 percent from its 1974 annual average of 100 to its 2010 annual average of 442.246. Using 2001 as a base (2001=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 23.2 percent from its 2001 annual average of 100 to its 2010 annual average of 123.152. Using 2006 as a base (2006=100), I certify that the CPI increased 8.2 percent from its 2006 annual average of 100 to its 2010 annual average of 108.163.

Signed at Washington, DC, on the 25th day of May 2011.

**Hilda L. Solis,**

*Secretary of Labor.*

[FR Doc. 2011–13747 Filed 6–1–11; 8:45 am]

**BILLING CODE 4510–24–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson, Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with

the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov* This information may also be requested by telephoning, 703/292–8182.

Dated: May 26, 2011.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 2011–13588 Filed 6–1–11; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Education and Human Resources (CEH), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

**DATE AND TIME:** June 8, 2011, 1 p.m.–2 p.m. EDT.

**SUBJECT MATTER:** Discussion of the Committee on Education and Human Resources (CEH) STEM education prospective horizon "action items" (to be developed at the teleconference) and discussion of the July 2011 CEH meeting agenda.

**STATUS:** Open.

**LOCATION:** This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A room will be available for the public to listen-in to this meeting held by teleconference at Stafford Place I, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. All visitors must contact the Board Office [call 703–292–7000 or send an e-mail message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the room number and provide name and organizational affiliation. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

**UPDATES AND POINT OF CONTACT:** Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting: Matthew B. Wilson, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

**Suzanne H. Plimpton,**

*Management Analyst, National Science Foundation.*

[FR Doc. 2011–13791 Filed 5–31–11; 4:15 pm]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–1036; NRC–2011–0121; EA–11–081]**

### In the Matter of Nine Mile Point Nuclear Station, LLC; Nine Mile Point Nuclear Station Independent Spent Fuel Storage Installation; Order Modifying License (Effective Immediately)

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Order for Implementation of Additional Security Measures and Fingerprinting for Unescorted Access to Nine Mile Point Nuclear Station, LLC.

**FOR FURTHER INFORMATION CONTACT:** L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: 301–492–3316; fax number: 301–492–3348; e-mail: *Raynard.Wharton@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

Pursuant to 10 CFR 2.106, NRC (or the Commission) is providing notice, in the matter of Nine Mile Point Nuclear Station Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

#### II. Further Information

*I*

NRC has issued a general license to Nine Mile Point Nuclear Station, LLC (NMPNS), authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) part 72. This Order is being issued to NMPNS because it has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission's regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR Part 73, Appendix C. Specific physical security requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

*II*

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment, in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, the environment, and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued Advisories, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at NMPNS's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to provide reasonable assurance of adequate protection of public health and safety, in light of the continuing threat environment, the Commission concludes that these actions must be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

*III*

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *it is hereby ordered, effective immediately, that your general license is modified as follows:*

A. NMPNS shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the Nine Mile Point Nuclear Station's physical security plan. NMPNS shall demonstrate its ability to comply with the requirements in Attachments 1 and 2 to the Order no later than 365 days from the date of this Order or 90 days before the first day that spent fuel is initially placed in the ISFSI, whichever is earlier. NMPNS must implement these requirements before initially placing spent fuel in the ISFSI. Additionally, NMPNS must receive written verification from the NRC that it has adequately demonstrated compliance with these requirements before initially placing spent fuel in the ISFSI.

B. 1. NMPNS shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause NMPNS to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide NMPNS's justification for seeking relief from, or variation of, any specific requirement.

2. If NMPNS considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, NMPNS must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 1 and 2 requirements in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, NMPNS must supplement its response, to Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C. 1. NMPNS shall, within twenty (20) days of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachments 1 and 2.

2. NMPNS shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

NMPNS's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals and documents produced by NMPNS as a result of this order, that contain Safeguards Information as defined by 10 CFR 73.22, shall be properly marked and handled, in accordance with 10 CFR 73.21 and 73.22.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

*IV*

In accordance with 10 CFR 2.202, NMPNS must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, NMPNS and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which NMPNS relies and the reasons as to why the Order should not have been issued. If a person other than NMPNS requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

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 the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the NRC'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 of the Commission, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by NMPNS or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), NMPNS may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date this Order is published in the **Federal Register**, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III, shall be final when the extension expires, if a hearing request has not

been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 25th day of May 2011.

For the Nuclear Regulatory Commission.

**Catherine Haney,**

*Director, Office of Nuclear Material Safety and Safeguards.*

**Attachment 1—Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs) Contains Safeguards Information and Is not Included in the Federal Register Notice**

**Attachment 2—Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations, dated June 3, 2010**

*A. General Basis Criteria*

1. These additional security measures (ASMs) are established to delineate an independent spent fuel storage installation (ISFSI) licensee's responsibility to enhance security measures related to authorization for unescorted access to the protected area of an ISFSI in response to the current threat environment.

2. Licensees whose ISFSI is collocated with a power reactor may choose to comply with the U.S. Nuclear Regulatory Commission (NRC)-approved reactor access authorization program for the associated reactor as an alternative means to satisfy the provisions of sections B through G below. Otherwise, licensees shall comply with the access authorization and fingerprinting requirements of section B through G of these ASMs.

3. Licensees shall clearly distinguish in their 20-day response which method they intend to use in order to comply with these ASMs.

*B. Additional Security Measures for Access Authorization Program*

1. The licensee shall develop, implement and maintain a program, or enhance its existing program, designed to ensure that persons granted unescorted access to the protected area of an ISFSI are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety for the common defense and security, including a potential to commit radiological sabotage.

a. To establish trustworthiness and reliability, the licensee shall develop, implement, and maintain procedures for conducting and completing background investigations, prior to granting access. The scope of background investigations must address at least the past 3 years and, as a minimum, must include:

i. Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check (CHRC). Where an applicant for unescorted access has been previously fingerprinted with a favorably completed CHRC, (such as a CHRC pursuant to compliance with orders for access to safeguards information) the licensee may accept the results of that CHRC, and need not submit another set of fingerprints, provided the CHRC was completed not more than 3 years from the date of the application for unescorted access.

ii. Verification of employment with each previous employer for the most recent year from the date of application.

iii. Verification of employment with an employer of the longest duration during any calendar month for the remaining next most recent 2 years.

iv. A full credit history review.

v. An interview with not less than two character references, developed by the investigator.

vi. A review of official identification (e.g., driver's license; passport; government identification; state-, province-, or country-of-birth issued certificate of birth) to allow comparison of personal information data provided by the applicant. The licensee shall maintain a photocopy of the identifying document(s) on file, in accordance with "Protection of Information," in Section G of these ASMs.

vii. Licensees shall confirm eligibility for employment through the regulations of the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and shall verify and ensure, to the extent possible, the accuracy of the provided social security number and alien registration number, as applicable.

b. The procedures developed or enhanced shall include measures for confirming the term, duration, and character of military service for the past 3 years, and/or academic enrollment and attendance in lieu of employment, for the past 5 years.

c. Licensees need not conduct an independent investigation for individuals employed at a facility who possess active "Q" or "L" clearances or possess another active U.S. Government-granted security clearance (i.e., Top Secret, Secret, or Confidential).

d. A review of the applicant's criminal history, obtained from local criminal justice resources, may be included in addition to the FBI CHRC, and is encouraged if the results of the FBI CHRC, employment check, or credit check disclose derogatory information. The scope of the applicant's local criminal history check shall cover all residences of record for the past 3 years from the date of the application for unescorted access.

2. The licensee shall use any information obtained as part of a CHRC solely for the purpose of determining an individual's suitability for unescorted access to the protected area of an ISFSI.

3. The licensee shall document the basis for its determination for granting or denying access to the protected area of an ISFSI.

4. The licensee shall develop, implement, and maintain procedures for updating background investigations for persons who are applying for reinstatement of unescorted access. Licensees need not conduct an independent reinvestigation for individuals who possess active "Q" or "L" clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

5. The licensee shall develop, implement, and maintain procedures for reinvestigations of persons granted unescorted access, at intervals not to exceed 5 years. Licensees need not conduct an independent reinvestigation for individuals employed at a facility who possess active "Q" or "L" clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

6. The licensee shall develop, implement, and maintain procedures designed to ensure that persons who have been denied unescorted access authorization to the facility are not allowed access to the facility, even under escort.

7. The licensee shall develop, implement, and maintain an audit program for licensee and contractor/vendor access authorization programs that evaluate all program elements and include a person knowledgeable and practiced in access authorization program performance objectives to assist in the overall assessment of the site's program effectiveness.

*C. Fingerprinting Program Requirements*

1. In a letter to the NRC, the licensee must nominate an individual who will review the results of the FBI CHRCs to make trustworthiness and reliability determinations for unescorted access to an ISFSI. This individual, referred to as the "reviewing official," must be someone who requires unescorted access to the ISFSI. The NRC will review the CHRC of any individual nominated to perform the reviewing official function. Based on the results of the CHRC, the NRC staff will determine whether this individual may have access. If the NRC determines that the nominee may not be granted such access, that individual will be prohibited from obtaining access.[1] Once the NRC approves a reviewing official, the reviewing official is the only individual permitted to make access determinations for other individuals who have been identified by the licensee as having the need for unescorted access to the ISFSI, and have been fingerprinted and have had a CHRC in accordance with these ASMs. The reviewing official can only make access determinations for other individuals, and therefore cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.

2. No person may have access to Safeguards Information (SGI) or unescorted access to any facility subject to NRC regulation, if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and CHRC, that the person may not have access to SGI or unescorted access to any facility subject to NRC regulation.

3. All fingerprints obtained by the licensee under this Order, must be submitted to the Commission for transmission to the FBI.

4. The licensee shall notify each affected individual that the fingerprints will be used to conduct a review of his/her criminal

[1] The NRC's determination of this individual's unescorted access to the ISFSI, in accordance with the process, is an administrative determination that is outside the scope of the Order.

history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information," in section F of these ASMs.

5. Fingerprints need not be taken if the employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, has a favorably adjudicated U.S. Government CHRC within the last 5 years, or has an active Federal security clearance. Written confirmation from the Agency/employer who granted the Federal security clearance or reviewed the CHRC must be provided to the licensee. The licensee must retain this documentation for a period of 3 years from the date the individual no longer requires access to the facility.

*D. Prohibitions*

1. A licensee shall not base a final determination to deny an individual unescorted access to the protected area of an ISFSI solely on the basis of information received from the FBI involving: an arrest more than 1 year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge, or an acquittal.

2. A licensee shall not use information received from a CHRC obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

*E. Procedures for Processing Fingerprint Checks*

1. For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop TWB–05B32M, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to an ISFSI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 301–415–5877, or by e-mail to *forms@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards because of illegible or incomplete cards.

2. The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

3. Fees for processing fingerprint checks are due upon application. The licensee shall submit payment of the processing fees electronically. To be able to submit secure electronic payments, licensees will need to establish an account with Pay.Gov (*https://www.pay.gov*). To request an account, the licensee shall send an e-mail to *det@nrc.gov.* The e-mail must include the licensee's company name, address, point of contact (POC), POC e-mail address, and phone number. The NRC will forward the request to Pay.Gov; who will contact the licensee with a password and user lD. Once the licensee has established an account and submitted payment to Pay.Gov, they shall obtain a receipt. The licensee shall submit the receipt from Pay.Gov to the NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at 301–492–3531. Combined payment for multiple applications is acceptable. The application fee (currently $26) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

4. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for CHRCs, including the FBI fingerprint record.

*F. Right to Correct and Complete Information*

1. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal history records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of 1 year from the date of notification.

2. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least 10 days for an individual to initiate an action challenging the results of a FBI CHRC after the record is made available for his/her review. The licensee may make a final access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to an ISFSI, the licensee shall provide the individual its documented basis for denial. Access to an ISFSI shall not be granted to an individual during the review process.

*G. Protection of Information*

1. The licensee shall develop, implement, and maintain a system for personnel information management with appropriate procedures for the protection of personal, confidential information. This system shall be designed to prohibit unauthorized access to sensitive information and to prohibit modification of the information without authorization.

2. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures, for protecting the record and the personal information from unauthorized disclosure.

3. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining suitability for unescorted access to the protected area of an ISFSI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have the appropriate need to know.

4. The personal information obtained on an individual from a CHRC may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

5. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

[FR Doc. 2011–13674 Filed 6–1–11; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0118]**

### Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Homeland Security on Chemical Facility Anti-Terrorism Standards

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**FOR FURTHER INFORMATION CONTACT:** R. Clyde Ragland, Project Manager (Security), Fuel Cycle and Transportation Security Branch, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7008; fax number: 301–415–6382; e-mail: *clyde.ragland@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the Department of Homeland Security (DHS). The MOU delineates clear lines of responsibility between the parties, based on their legal authorities, for the security of high-risk chemical facilities subject to DHS regulation and for the security of chemicals at facilities subject to NRC regulation. The MOU describes the parties' relationship in identifying which facilities are subject to NRC regulation and thus are, in whole or in part, exempt from the chemical facility security regulations issued by DHS.

**II. Effective Date**

This MOU is effective March 31, 2011.

**III. Further Information**

Documents related to this action are available online at the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the MOU is ML111010355. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to: *pdr.resource@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, Room, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 25th day of May 2011.

For the Nuclear Regulatory Commission.

**Peter Prescott,**

*Acting Branch Chief, Fuel Cycle and Transportation Security Branch, Division of Security Policy, Office of Nuclear Security and Incident Response.*

[FR Doc. 2011–13676 Filed 6–1–11; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Court Orders Affecting Retirement Benefits

**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 an existing information collection request (ICR) 3206–0204, Court Orders Affecting Retirement Benefits. 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 March 9, 2011 at Volume 76 FR 12999 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 July 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 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.

**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:** Court Orders Affecting Retirement Benefits, 5 CFR 838.221, 838.421, and 838.721 describe how former spouses give us written notice of a court order requiring us to pay benefits to the former spouse. Specific information is needed before OPM can make court-ordered benefit payments.

**Analysis**

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Court Orders Affecting Retirement Benefits, 5 CFR 838.221, 838.421, and 838.721.

*OMB Number:* 3206–0204.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 19,000.

*Estimated Time per Respondent:* 30 minutes.

*Total Burden Hours:* 9,500.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2011–13694 Filed 6–1–11; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Cancellation of an Optional Form by the Office of Personnel Management

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is cancelling the Optional Application for Federal Employment. The information contained in the OF 612 is now incorporated in the online Resume Builder on the USAJOBS® Web site. The need to maintain the OF 612 as an alternative means of applying for Federal positions no longer exists as job seekers now have the ability to either build or upload resumes. This action is being taken to facilitate a more seamless employment application process for both Federal agencies and job seekers, consistent with the goals of Federal hiring reform.

**DATES:** Effective June 13, 2011.

**FOR FURTHER INFORMATION CONTACT:** U.S. Office of Personnel Management, Employment Services, USAJOBS, 1900 E. Street, NW., Washington, DC 20415, *Attention:* USAJOBS, or via electronic mail to *patricia.stevens@opm.gov.*

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2011–13704 Filed 6–1–11; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Employees Health Benefits Program: Medically Underserved Areas for 2012

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 2012. This is necessary to comply with a provision of the FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 2012, the following 15 states are considered as Medically Underserved Areas under the FEHB Program: Alabama, Alaska, Arizona, Idaho, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, and Wyoming. South Carolina is designated as a Medically Underserved Area in 2011, but will not be so designated for 2012. Alaska is being added as a Medically Underserved Area for the 2012 calendar year.

**DATES:** *Effective Date:* January 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Lynelle T. Frye, 202–606–0004.

**SUPPLEMENTARY INFORMATION:** FEHB law (5 U.S.C. 8902(m)(2)) requires special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. This section of the law requires that a State be designated as a Medically Underserved Area if 25 percent or more of the population lives in an area designated by the Department of Health and Human Services (HHS) as a primary medical care manpower shortage area. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires non-HMO FEHB plans to reimburse beneficiaries, subject to their contract terms, for covered services obtained from any licensed provider in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest HHS State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident populations.

U.S. Office of Personnel Management.

**John Berry,**

*Director..*

[FR Doc. 2011–13695 Filed 6–1–11; 8:45 am]

**BILLING CODE 6325–63–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Posting of Service Contract Inventory

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of posting.

**SUMMARY:** The Office of Personnel Management has posted on its public Web site an inventory of the services contracts exceeding $25,000 that were awarded by the agency in Fiscal Year (FY) 2010. The inventory was prepared in accordance with Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law 111–117, and with a Memorandum from the Office of Federal Procurement Policy dated November 5, 2010. It consists of two parts: (1) A complete listing of all contracts; and (2) A summary by Product or Service Code to show the use of contractors to perform "special interest functions" as well as the services that accounted for the agency's greatest percentage of spend in FY 2010. Both parts of the inventory can be found at: *http://www.opm.gov/doingbusiness/contract/businessops.aspx.*

**FOR FURTHER INFORMATION CONTACT:** William N. Patterson, Director, Contracting Group, Facilities, Security and Contracting, Office of Personnel Management, 1900 E Street, NW., Room 1342, Washington, DC 20415. Phone (202) 606–1984 or e-mail at *William.Patterson@opm.gov.*

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2011–13696 Filed 6–1–11; 8:45 am]

**BILLING CODE 6325–45–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64552; File No. SR–NASDAQ–2011–070]**

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Functionality of the Post-Only Order

May 26, 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 May 19, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to modify the functionality of its Post-Only Order. NASDAQ proposes to implement the rule change thirty days after the date of filing or as soon thereafter as practicable. The text of the proposed rule change is available

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

at *http://nasdaq.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

NASDAQ proposes to modify the functionality associated with its existing Post-Only Order. Currently, if a Post-Only Order would lock an order on the NASDAQ System at the time of entry, the order is re-priced and displayed by the System to one minimum price increment (i.e., $0.01 or $0.0001) below the current low offer (for bids) or above the current best bid (for offers). Thus, if the best bid and best offer on the NASDAQ book were $10.00 × $10.05, and a market participant entered a Post-Only Order to buy at $10.05, the order would be re-priced and displayed at $10.04. This aspect of the functionality of the order is not changing. In addition, if a Post-Only Order would cross an order on the System, the order will be repriced as described above unless the value of price improvement associated with executing against a resting order equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the book and subsequently provided liquidity, in which case the order will execute. As provided by Rule 4757, price improvement accrues to the party entering the order. Thus, if a sell order is on the book at $10 and a Post-Only Order to buy at $10.01 is entered, the order will execute at $10. This aspect of the order's functionality is also not changing.[3]

At present, however, the order is repriced in a similar manner if the order would lock or cross a protected quotation of another market center. Thus, if the national best offer of $10.05 is being displayed on another market center but not on NASDAQ, at present an order to buy at $10.05 would be repriced and displayed at $10.04. Under the changed functionality that NASDAQ is proposing, if the order locks or crosses the other market center, the order will be accepted at the locking price (*i.e.,* the current low offer (for bids) or to the current best bid (for offers)) and displayed by the System to one minimum price increment (i.e., $0.01 or $0.0001) below the current low offer (for bids) or above the current best bid (for offers). Thus, if the national best bid and offer, as displayed on another market center, was $10 x $10.05, an order to buy at $10.05 or higher would be accepted at the locking price of $10.05, but would be displayed at $10.04. Subsequently, an incoming order to sell at $10.05 or lower would be matched against the Post-Only buy order. In this case, the incoming sell order would receive price improvement.

As a result of the change, the order will resemble more closely NASDAQ's Price to Comply order, which uses a similar logic of retaining a locking price but displaying at a non-locking price. The modified Post-Only Order will serve to allow the market participant entering the order to post its order at its desired price, unless the price would lock or cross the NASDAQ book, in which case the order will execute or be repriced, as is currently the case, to avoid the internal lock/cross. The revised order type is designed to provide market participants with better control over their execution costs and to provide them with a means to offer price improvement opportunities to other market participants.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASDAQ also believes that the modified order is consistent with Rule 610(d) under Regulation NMS.[6] Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid "[d]isplaying quotations that lock or cross any protected quotation in an NMS stock." Such rules must be "reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock," and must "prohibit * * * members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in an NMS stock." Rule 600 under Regulation NMS[7] defines a "quotation" as a "bid or offer," and in turn defines "bid or offer" to mean "the bid price or the offer price communicated by a member * * * to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security * * *." Thus, the hidden price of the Post-Only Order is not a quotation under Regulation NMS, and is therefore covered neither by the provisions of Rule 610 pertaining to displayed quotations nor by the provision requiring rules to assure reconciliation of locked or crossed quotations. In this respect, the order is similar to NASDAQ's existing Price to Comply order, which uses a hidden locking price and a displayed non-locking price to ensure compliance with this rule. It is also similar to the Post Only Order of the BATS Exchange and the BATS–Y Exchange, as described in BATS Exchange Rule 11.9(c)(4) and (6) and BATS–Y Exchange Rule 11.9(c)(4) and (6), and the Post Only Order of the EDGA Exchange and EDGX Exchange, as described in EDGA Exchange Rule 11.5(c)(4) and (5) and EDGX Exchange Rule 11.5(c)(4) and (5).

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Rather, the change will promote greater competition by allowing NASDAQ to adopt functionality already in use at competing national securities exchanges.

[3] The functionality was described in the original filing to establish the Post-Only Order but was not fully reflected in the text of Rule 4751. *See* Securities Exchange Act Release No. 59392 (February 11, 2009), 74 FR 7943 (February 20, 2009) (SR–NASDAQ–2009–006). Accordingly, the rule is being amended to provide a complete description of the order's current behavior when crossing an existing order on the System.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 242.610(d).

[7] 17 CFR 242.600.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–070 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–070. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–070 and should be submitted on or before June 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–13624 Filed 6–1–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[10] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64551; File No. SR–CBOE–2011–026]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto To Trade Options on Certain Individual Stock Based Volatility Indexes and Exchange-Traded Fund Based Volatility Indexes

May 26, 2011.

On March 29, 2011, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to trade options on certain individual stock based and exchange-traded fund ("ETF") based volatility indexes. The proposed rule change was published for comment in the **Federal Register** on April 13, 2011.[3] The Commission received no comments in response to the Notice.

On May 16, 2011, the Exchange submitted Amendment No. 1 to the proposed rule change, as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of Amendment No. 1 to the Proposed Rule Change**

CBOE proposes to amend its rules to list and trade options on certain individual stock based volatility indexes and ETF based volatility indexes. The proposed options will be cash-settled and will have European-style exercise. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64245 (April 7, 2011), 76 FR 20784 ("Notice").

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Amendment 1 replaces the original filing in its entirety. The purpose of Amendment 1 is to limit the original proposal to specific individual stock-based and exchange-traded-fund based ("ETF") volatility indexes.

The purpose of this proposed rule change is to permit the Exchange to list and trade cash-settled, European-style options on certain Individual Stock or ETF Based Volatility Indexes (collectively, "Vol Indexes"). Specifically, CBOE proposes to list options on Vol Indexes comprised of options on the following individual stocks: Apple Computer, Amazon, Goldman Sachs, Google and IBM. In addition, CBOE will list Vol Indexes comprised of options on the following ETFs: the US Oil Fund, LP ("USO"), the iShares MSCI Emerging Markets Index Fund ("EEM"), the iShares FTSE China 25 Index Fund ("FXI"), the iShares MSCI Brazil Index Fund ("EWZ"), the Market Vectors Gold Miners ETF ("GDX"), and the Energy Select Sector SPDR ETF ("XLE"). These are in addition to options on the CBOE Gold ETF Volatility Index ("GVZ"), which has already been approved for trading by the Commission.[4]

Below is a chart identifying the specific Vol Indexes the Exchange is proposing to trade options on:

| Ticker symbol | Volatility Index name | Underlying option class |
|---|---|---|
| VXAPL | CBOE Equity VIX on Apple | AAPL |
| VXAZN | CBOE Equity VIX on Amazon | AMZN |
| VXGS | CBOE Equity VIX on Goldman Sachs | GS |
| VXGOG | CBOE Equity VIX on Google | GOOG |
| VXIBM | CBOE Equity VIX on IBM | IBM |
| OVX | CBOE Crude Oil ETF Volatility Index | USO |
| VXEEM | CBOE Emerging Markets ETF Volatility Index | EEM |
| VXFXI | CBOE China ETF Volatility Index | FXI |
| VXEWZ | CBOE Brazil ETF Volatility Index | EWZ |
| VXGDX | CBOE Gold Miners ETF Volatility Index | GDX |
| VXXLE | CBOE Energy Sector ETF Volatility Index | XLE |

Index Design and Calculation

The calculation of a Vol Index will be based on the VIX and GVZ methodology applied to options on the individual stock or ETF that is the subject of the particular Vol Index. A Vol Index is an up-to-the-minute market estimate of the expected volatility of the underlying individual stock or ETF calculated by using real-time bid/ask quotes of CBOE listed options on the underlying instruments. A Vol Index 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.[5]

CBOE will compute values for Vol Index underlying option series on a real-time basis throughout each trading day, from 8:30 a.m. until 3 p.m. (Chicago time) (or until 3:15 p.m. (Chicago time) as applicable for certain ETF Based Volatility Index options). Vol Index levels will be calculated by CBOE and disseminated at 15-second intervals to major market data vendors.

Options Trading

Vol Index options will be quoted in index points and fractions and one point will equal $100. The minimum tick size for series trading below $3 will be 0.05 ($5.00) and above $3 will be 0.10 ($10).00). Initially, the Exchange will list in-, at- and out-of-the-money strike prices and the procedures for adding additional series are provided in Rule 5.5.[6] Dollar strikes (or greater) will be permitted for Vol Index options where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.

Transactions in Vol Index options may be effected on the Exchange between the hours of 8:30 a.m. Chicago time and 3:15 p.m. (Chicago time), except (for Exchange-Trade Fund Based Volatility Index options) if the closing time for traditional options on the ETF is earlier than 3:15 p.m. (Chicago time), the earlier closing time shall apply. The Exchange is proposing to permit different closing times for ETF Based Volatility Index options because the trading hours for traditional options on ETFs vary.

Exercise and Settlement

The proposed options will typically expire on the Wednesday that is 30 days prior to the third Friday of the calendar month immediately following the expiration month (the expiration date of the options used in the calculation of the index). If the third Friday of the calendar month immediately following the expiring month is a CBOE holiday, the expiration date will be 30 days prior to the CBOE business day immediately preceding that Friday. For example, November 2011 Vol Index options would expire on Wednesday, November 16, 2011, exactly 30 days prior to the third Friday of the calendar month

[4] *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 the CBOE).

[5] CBOE will be the reporting authority for any Vol Index.

[6] *See* Rule 5.5(c). "Additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying * * * moves substantially from the initial exercise price or prices." For purposes of this rule, "market price" shall mean the implied forward level based on any corresponding futures price or the calculated forward value of the respective Vol index.

immediately following the expiring month.

Trading in the expiring contract month will normally cease at 3 p.m. (Chicago time) (or at 3:15 p.m. (Chicago time) as applicable for ETF Based Volatility Index options) on the business day immediately preceding the expiration date.[7] Exercise will result in delivery of cash on the business day following expiration. Vol Index options will be A.M.-settled.[8] The exercise settlement value will be determined by a Special Opening Quotations ("SOQ") of a Vol Index calculated from the sequence of opening prices of a single strip of options expiring 30 days after the settlement date. The opening price for any series in which there are [sic] is no trade shall be the average of that options' bid price and ask price as determined at the opening of trading.[9]

The exercise-settlement amount will be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by $100. When the last trading day is moved because of a CBOE holiday, the last trading day for expiring options will be the day immediately preceding the last regularly-scheduled trading day.

Position and Exercise Limits

For regular options trading, the Exchange is proposing to establish position limits for Vol Index options at 50,000 contracts on either side of the market and no more than 30,000 contracts in the nearest expiration month. CBOE believes that a 50,000 contract position limit is appropriate due to the fact that the options which are the underlying components for a Vol Index are among the most actively traded option classes currently listed. In determining compliance with these proposed position limits, Vol Index options will not be aggregated with the underlying ETF or individual stock options. Exercise limits will be the equivalent to the proposed position limits.[10] Vol Index options will be subject to the same reporting requirements triggered for other options dealt in on the Exchange.

For FLEX options trading, the Exchange is proposing that the position limits for FLEX Vol Index Options will be equal to the position limits for Non-FLEX Options on the same Vol Index. Similarly, the Exchange is proposing that the exercise limits for FLEX Vol Index Options will be equivalent to the position limits established pursuant to Rule 24.4. The proposed position and exercise limits for FLEX Vol Index Options are consistent with the treatment of position and exercise limits for Flex GVZ and other Flex Index Options. The Exchange is also proposing to amend subparagraph (4) to Rules 24A.7(d) and 24B.7(d) to provide that as long as the options positions remain open, positions in FLEX Vol Index Options that expire on the same day as Non-FLEX Vol Index Options, as determined pursuant to Rule 24.9(a)(5), shall be aggregated with positions in Non-FLEX Vol Index Options and shall be subject to the position limits set forth in Rules 4.11, 24.4, 24.4A and 24.4B, and the exercise limits set forth in Rules 4.12 and 24.5.

The Exchange is proposing to establish a Vol Index Hedge Exemption, which would be in addition to the standard limit and other exemptions available under Exchange rules, interpretations and policies. The Exchange proposes to establish the following procedures and criteria which must be satisfied to qualify for a Vol Index hedge exemption:

- The account in which the exempt option positions are held ("hedge exemption account") has received prior Exchange approval for the hedge exemption specifying the maximum number of contracts which may be exempt under the proposed new Interpretation. The hedge exemption account has provided all information required on Exchange-approved forms and has kept such information current. Exchange approval may be granted on the basis of verbal representations, in which event the hedge exemption account shall within two (2) business days or such other time period designated by the Department of Market Regulation furnish the Department of Market Regulation with appropriate forms and documentation substantiating the basis for the exemption. The hedge exemption account may apply from time to time for an increase in the maximum number of contracts exempt from the position limits.
- A hedge exemption account that is not carried by a CBOE member organization must be carried by a member of a self-regulatory organization participating in the Intermarket Surveillance Group.
- The hedge exemption account maintains a qualified portfolio, or will effect transactions necessary to obtain a qualified portfolio concurrent with or at or about the same time as the execution of the exempt options positions, of a net long or short position in Equity-Based Volatility Index futures contracts or in options on Vol Index futures contracts, or long or short positions in Vol Index options, for which the underlying Vol Index is included in the same margin or cross-margin product group cleared at the Clearing Corporation as the Vol Index option class to which the hedge exemption applies. To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity.
- The exemption applies to positions in Vol Index options dealt in on the Exchange and is applicable to the unhedged value of the qualified portfolio. The unhedged value will be determined as follows: (1) The values of the net long or short positions of all qualifying products in the portfolio are totaled; (2) for positions in excess of the standard limit, the underlying market value (a) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (b) of any opposite side of the market positions in Vol Index futures, options on Vol Index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and (3) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows—the unhedged qualified portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.
- Only the following qualified hedging transactions and positions will be eligible for purposes of hedging a qualified portfolio (*i.e.* futures and options) pursuant to the proposed new Interpretation .01:
  - ○ Long put(s) used to hedge the holdings of a qualified portfolio;
  - ○ Long call(s) used to hedge a short position in a qualified portfolio;
  - ○ Short call(s) used to hedge the holdings of a qualified portfolio; and
  - ○ Short put(s) used to hedge a short position in a qualified portfolio.
- The following strategies may be effected only in conjunction with a qualified stock portfolio:
  - ○ A short call position accompanied by long put(s), where the short call(s) expires with the long put(s), and the

[7] *See* proposed amendment to Rule 24.6, *Days and Hours of Business.*

[8] *See* proposed amendment to Rule 24.9(a)(4) (adding Individual Stock or ETF Based Volatility Indexes to the list of A.M.-settled index options approved for trading on the Exchange).

[9] *See* proposed amendment to Rule 24.9(a)(5) (revising rule to make "Volatility Index" options generic for purposes of this provision, which sets forth the method of determining the day that the exercise settlement value is calculated and of determining the expiration date and the last trading day for CBOE Volatility Index Options). The Exchange is also proposing to make technical changes to this rule provision as well.

[10] *See* proposed amendment to rule 24.5 and proposed new Interpretations and Policy .04 to rule 24.5.

strike price of the short call(s) equals or exceeds the strike price of the long put(s) (a "collar"). Neither side of the collar transaction can be in-the-money at the time the position is established. For purposes of determining compliance with Rules 4.11 and proposed Rule 24.4C, a collar position will be treated as one (1) contract;

○ A long put position coupled with a short put position overlying the same Vol Index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s) (a "debit put spread position"); and

○ A short call position accompanied by a debit put spread position, where the short call(s) expires with the puts and the strike price of the short call(s) equals or exceeds the strike price of the long put(s). Neither side of the short call, long put transaction can be in-the-money at the time the position is established. For purposes of determining compliance with Rule 4.11 and proposed Rule 24.4C, the short call and long put positions will be treated as one (1) contract.

• The hedge exemption account shall:

○ Liquidate and establish options, their equivalent or other qualified portfolio products in an orderly fashion; not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes.

○ Liquidate any options prior to or contemporaneously with a decrease in the hedged value of the qualified portfolio which options would thereby be rendered excessive.

○ Promptly notify the Exchange of any material change in the qualified portfolio which materially affects the unhedged value of the qualified portfolio.

• If an exemption is granted, it will be effective at the time the decision is communicated. Retroactive exemptions will not be granted.

Exchange Rules Applicable

Except as modified herein, the rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB will equally apply to Vol Index options.

The Exchange is proposing that the margin requirements for Vol Index options be set at the same levels that apply to equity options under Exchange Rule 12.3. Margin of up to 100% of the current market value of the option, plus 20% of the underlying volatility index value must be deposited and maintained. The pertinent provisions of Rule 12.3, *Margin Requirements,* have been amended to reflect these proposed revisions. Additional margin may be required pursuant to Exchange Rule 12.10.

The Exchange hereby designates Vol Index options as eligible for trading as Flexible Exchange Options as provided for in Chapters XXIVA (Flexible Exchange Options) and XXIVB (FLEX Hybrid Trading System). The Exchange notes that Vol Index FLEX Options will only expire on business days that non-FLEX options on Vol Indexes expire. This is because the term "exercise settlement value" in Rules 24A.4(b)(3) and 24B.4(b)(3), *Special Terms for FLEX Index Options,* has the same meaning set forth in Rule 24.9(5). As is described earlier, the Exchange is proposing to amend Rule 24.9(a)(5) to provide that the exercise settlement value of Vol Index options for all purposes under CBOE Rules will be calculated as the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the month in which a Vol Index options expire.

Capacity

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the introduction of Vol Index options.

Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Vol Index options. The Exchange further represents that these surveillance procedures shall be adequate to monitor trading in options on these volatility indexes. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act [11] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the introduction of Vol Index options will attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedging tool to investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. 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.[14] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

As a national securities exchange, the CBOE is required under Section 6(b)(1) of the Act [16] to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In addition, brokers that trade options on Vol Indexes will also be subject to best execution obligations and FINRA rules.[17] Applicable exchange rules also require that customers receive appropriate disclosure before trading

[11] 15 U.S.C. 78s(b)(1).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 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).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(1).

[17] *See* NASD Rule 2320.

options on Vol Indexes.[18] Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.[19]

Options on Vol Indexes will trade as options under the trading rules of the CBOE. The Commission believes that the listing rules proposed by CBOE for options on Vol Indexes are consistent with the Act. Vol Index options will be quoted in index points and fractions and one point will equal $100. The minimum tick size for series trading below $3 will be 0.05 ($5.00) and above $3 will be 0.10 ($10). Dollar strikes (or greater) will be permitted for Vol Index options where the strike price is $200 or less and $ or greater where the strike price is greater than $200. This should provide investors with greater flexibility in the trading of options on Vol Indexes and further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives. The Commission notes that CBOE will compute Vol Index levels and disseminate the values at 15-second intervals to major market data vendors.

The Commission believes that the Exchange's proposed position limits and exercise limits for options on Vol Indexes are appropriate and consistent with the Act. The Commission notes that the particular Vol Index options in this proposed rule change track liquid underlying stocks and ETFs. In addition, the Commission notes that the position limits are similar to those for options on the GVZ which the Commission previously approved. The Commission also notes that the margin requirements for equity options as specified in CBOE Rule 12.3 will also apply to options on Vol Indexes. The Commission finds this to be reasonable and consistent with the Act.

The Commission also believes that the Exchange's proposal to allow options on Vol Indexes to be eligible for trading as FLEX Options is consistent with the Act. The Commission previously approved rules relating to the listing and trading of FLEX Options on CBOE, which give investors and other market participants the ability to individually tailor, within specified limits, certain terms of those options.[20] The current proposal incorporates options on Vol Indexes that trade as FLEX Options into these existing rules and regulatory framework. In addition, the Commission notes that the position and exercise limits for FLEX options on Vol Indexes will be the same as those previously approved for options on the GVZ.

The Commission believes that the hedge exemption for position limits on options on Vol Indexes in proposed Interpretations and Policies .01 to CBOE Rule 24.4C are reasonable. The exemption is limited and sets objective standards for when the exemption applies. The Commission believes that this approach ensures that position limits are not improperly circumvented but at the same time are flexible enough to accommodate hedging strategies employed by market participants.

Lastly, the Commission notes that CBOE represented that it has an adequate surveillance program to monitor trading of options on Vol Indexes and intends to apply its existing surveillance program to support the trading of these options. Finally, in approving the proposed rule change, the Commission has also relied upon the Exchange's representation that it has the necessary systems capacity to support new options series that will result from this proposal.

## IV. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

Amendment No. 1 limits the universe of Vol Indexes to specific individual stock-based and ETF based volatility indexes. Amendment No. 1 does not propose any new changes but instead narrows the scope of the original proposal. The Commission notes that CBOE is required to file a rule filing under Rule 19b–4 under the Act[21] that would require Commission approval before listing options on any additional Vol Indexes. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[22] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–CBOE–2011–026), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–13636 Filed 6–1–11; 8:45 am]

**BILLING CODE 8011–01–P**

[18] *See* CBOE Rule 9.15.

[19] *See* FINRA Rule 2360(b) and CBOE Rules 9.7 and 9.9.

[20] *See* Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993).

[21] 17 CFR 240.19b–4.

[22] 15 U.S.C. 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64549; File No. SR–Phlx–2011–46]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change To Expand the Number of Components in the PHLX Gold/Silver Sector℠ Known as XAU℠, on Which Options Are Listed and Traded

May 26, 2011.

On March 31, 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 number of components in the PHLX Gold/Silver Sector℠ (the "Index" or "XAU℠"), on which options are listed and traded, and to change the Index weighting methodology.[3] The proposed rule change was published for comment in the **Federal Register** on April 13, 2011.[4] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

The Gold/Silver Index is a P.M. settled capitalization-weighted index composed of the stocks of widely held U.S. listed companies involved in the gold/silver mining industry. Options on the Index have an American-style expiration and the settlement value is based on the closing values of the component stocks on the day exercised, or on the last trading day prior to expiration.

In 1996, the Exchange received approval to apply to the Index all of the Index Options Maintenance Standards of Rule 1009A(c) except the requirement that an index option be designated as A.M. settled per subsection (b)(1).[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PHLX Gold/Silver Sector℠ may also be known as Gold/Silver Index.

[4] *See* Securities Exchange Act Release No. 64244 (April 7, 2011), 76 FR 20775.

[5] *See* Securities Exchange Act Release No. 37334 (June 19, 1996), 61 FR 33162 (June 26, 1996) (SR–Phlx–96–03) (order approving use of modified Rule 1009A(c) generic maintenance standards in respect of options on the Index).

Subsection (c) also requires, among other things, that the Index comply with the concentration requirements specifically set forth in 1009A(b)(6) regarding the Gold/Silver Index.[6] The Index meets all of the subsection (c) Index Options Maintenance Standards (the A.M. settlement requirement is not applicable to the Index) for continued trading of options overlying the Index, with one exception, its proposed number of components.

The Exchange proposes to expand the number of components in the Index from sixteen to thirty. The Exchange represents that the expanded Index would continue to meet all of the index maintenance requirements in subsection (c) of Rule 1009A applicable to options on narrow-based indexes, except subsection (c)(2), which indicates that the total number of component securities in the index may not increase or decrease by more than 33⅓% from the total number of securities in the index at the time of its initial listing. The Exchange also proposes to change its Index weighting methodology from capitalization-weighted to modified capitalization-weighted.[7]

After careful consideration, 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[8] and, in particular, the requirements of Section 6 of the Act.[9] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

Index Design and Index Composition

Currently, the Index is calculated using a capitalization-weighted index methodology. The value of the Index equals the aggregate value of the Index share weights, also known as the Index shares, of each of the Index securities (components) multiplied by each such security's last sale price, and divided by the divisor of the Index. The divisor serves the purpose of scaling such aggregate index value to a lower order of magnitude which is more desirable for reporting purposes. If trading in an Index security is halted on its primary listing market, the most recent last sale price for that security is used for all index computations until trading on such market resumes. Likewise, the most recent last sale price is used if trading in a security is halted on its primary listing market before the market is open.

The modified capitalization-weighted methodology is expected to retain, in general, the economic attributes of capitalization weighting, while providing enhanced diversification.

Listing and Trading of Options on the Index

Phlx has represented that options on an expanded thirty-component Index would continue to meet the relevant Index Options Maintenance Standards in subsection (c) of Rule 1009A for listing XAU℠ options, except subsection (c)(2). Subsection (c)(2) of Phlx Rule 1009A only permits a maximum increase of 33⅓% from the total number of securities in the Index at the time of its initial listing. Additionally, the Exchange has represented that no other changes are being made to the Index as it currently exists. Based on these representations, the Commission believes that the proposed expansion to the Index is appropriate, and that Phlx should continue to be able to list and trade options on the Index.

Surveillance and Capacity

The Commission notes that the Exchange has represented that it has an adequate surveillance program in place for options traded on the Index and intends to apply those same program procedures that it applies to the Exchange's current XAU℠ options and other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement, dated June 20, 1994. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. The Exchange has also represented that it has the necessary systems capacity to continue to support listing and trading XAU℠ options. This order is based on these representations.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Phlx–2011–46) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–13575 Filed 6–1–11; 8:45 am]

**BILLING CODE 8011–01–P**

The maintenance provisions in subsection (c) of Rule 1009A state, in part, as applicable to XAU℠: (1) The conditions stated in subparagraphs (b)(1), (3), (6), (7), (8), (9), (10), (11) and (12), must continue to be satisfied, provided that the conditions stated in subparagraph (b)(6) must be satisfied only as to the first day of January and July in each year; (2) The total number of component securities in the index may not increase or decrease by more than 33⅓% from the number of component securities in the index at the time of its initial listing, and in no event may be less than nine component securities; (3) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; (4) In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months.

[6] *Id.* Regarding concentration requirements, subsection (b)(6)(i) states that with respect to the Gold/Silver Index, no single component shall account for more than 35% of the weight of the Index and the three highest weighted components shall not account for more than 65% of the weight of the Index; and that if the Index fails to meet this requirement, the Exchange shall reduce position limits to 8000 contracts on the Monday following expiration of the farthest-out, then trading, non-LEAP series.

[7] The Exchange has noted that both weighting methodologies are acceptable per the current generic index listing standards found in Rule 1009A(b)(2).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64550; File No. SR–NYSEArca–2011–11]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF

May 26, 2011.

### I. Introduction

On March 24, 2011, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 list and trade shares ("Shares") of the Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF (each a "Fund," and, together, the "Funds") under NYSE Arca Equities Rule 8.600. The proposed rule change was published in the **Federal Register** on April 12, 2011.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600. The Shares will be offered by the Claymore Exchange-Traded Fund Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[4] The investment advisor for the Funds is Claymore Advisors, LLC ("Investment Adviser"), The Bank of New York Mellon is the custodian and transfer agent for the Funds, and Claymore Securities, Inc. is the distributor for the Funds. The Exchange states that the Investment Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[5]

*Guggenheim Enhanced Core Bond ETF*

The investment objective of this Fund is to seek total returns using a quantitative strategy comprised of income and capital appreciation, and risk-adjusted returns in excess of the Barclays Capital U.S. Aggregate Bond Index ("Benchmark"), while maintaining a low-risk profile versus the Benchmark. The Fund's quantitative strategy attempts to identify relative mispricing among the instruments of a given asset class and to estimate future returns which may arise from the correction of these mispricing levels. The quantitative portfolio construction process then attempts to maximize expected returns due to issue-specific mispricing while controlling for interest rate and credit spread (*i.e.,* differences in yield between different debt instruments arising from differences in credit risk) risks. The average duration of the Fund's debt holdings is expected to be generally similar to the average duration of the Benchmark components.

The Fund primarily will invest in U.S. dollar-denominated investment grade debt securities, rated Baa or higher by Moody's Investors Service, Inc. ("Moody's"), or equivalently rated by Standard & Poor's Rating Group ("S&P") or Fitch Investor Services ("Fitch"), or, if unrated, determined by the Investment Adviser to be of comparable quality.[6] The Fund may invest, without limitation, in U.S. dollar-denominated debt securities of foreign issuers. The Fund may also invest in debt securities denominated in foreign currencies. The Investment Adviser may attempt to reduce foreign currency exchange rate risk by entering into contracts with banks, brokers, or dealers to purchase or sell securities or foreign currencies at a future date ("forward contracts"). The Fund may invest no more than 10% in high yield securities ("junk bonds"), which are debt securities that are rated below investment grade by nationally recognized statistical rating organizations, or are unrated securities that the Investment Adviser believes are of comparable quality.

The Fund may invest in a wide range of fixed income instruments selected from, but not limited to, the following sectors: U.S. Treasury securities, corporate bonds, emerging market debt, and non-dollar denominated sovereign and corporate debt.[7] The Fund may invest up to 10% of its assets in mortgage-backed securities ("MBS") or in other asset-backed securities. This limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration ("GNMA"), the Federal Housing Administration ("FHA"), the Federal National Mortgage Association ("FNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC").

The Fund may obtain exposure to the securities in which it normally invests by engaging in various investment techniques, including, but not limited to, forward purchase agreements, mortgage dollar roll, and "TBA" mortgage trading. The Fund also may invest directly in exchange-traded funds ("ETFs") and other investment companies that provide exposure to fixed income securities similar to those securities in which the Fund may invest in directly. The Fund will normally invest at least 80% of its net assets in fixed income securities.

*Guggenheim Enhanced Ultra-Short Bond ETF*

The investment objective of this Fund is to seek maximum current income, consistent with preservation of capital and daily liquidity. The Fund will use a low duration strategy to seek to outperform the 1–3 month Treasury Bill Index in addition to providing returns in excess of those available in U.S. Treasury bills, government repurchase agreements, and money market funds, while providing preservation of capital and daily liquidity. The Fund is not a money market fund and thus does not seek to maintain a stable net asset value of $1.00 per Share.

Under normal circumstances, the Fund expects to hold a diversified portfolio of fixed income instruments of varying maturities, but that have an average duration of less than 1 year. The Fund primarily will invest in U.S. dollar-denominated investment grade debt securities, rated Baa or higher by Moody's, or equivalently rated by S&P or Fitch or, if unrated, determined by the Investment Adviser to be of comparable quality. The Fund may invest, without limitation, in U.S. dollar-denominated debt securities of foreign issuers. The Fund may also

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64224 (April 7, 2011), 76 FR 20401 ("Notice").

[4] The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On July 26, 2010, the Trust filed with the Commission Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) relating to the Funds (File Nos. 333–134551 and 811–21906) ("Registration Statement").

[5] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event (a) the Investment Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, such adviser and/or sub-adviser will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.

[6] The Investment Adviser's analysis is comprised of multiple elements including collateral and counterparty risk, structural analysis, quantitative analysis and relative value/market value at risk analysis. Evaluation is also applied to collateral, historical market data, and proprietary statistical models to evaluate specific transactions. This analysis is applied against the macroeconomic outlook, geopolitical issues, as well as considerations that more directly affect the company's industry to determine an internally assigned credit rating.

[7] The Fund will invest only in securities that the Investment Adviser deems to be sufficiently liquid. While corporate bonds and emerging market debt generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment, at least 80% of issues of corporate bonds or corporate debt held by the Fund must have $200 million or more par amount outstanding. The strategy follows an active quantitative investment process that seeks excess returns to the Benchmark. The strategy selects securities using a rigorous portfolio construction approach to tightly control independent risk exposures such as fixed income sector weights, sector specific yield curves, credit spreads, prepayment risks, and others. Within those risk constraints, the strategy utilizes relative value estimates to select individual securities that can provide risk adjusted outperformance relative to the Benchmark.

invest in debt securities denominated in foreign currencies. The Investment Adviser may attempt to reduce foreign currency exchange rate risk by entering into contracts with banks, brokers, or dealers to purchase or sell securities or forward contracts. The Fund may invest no more than 10% in junk bonds. The Fund may also invest in municipal securities.

The Fund may invest a substantial portion of its assets in short-term instruments, such as commercial paper and/or repurchase agreements. The Fund may also invest in a wide range of fixed income instruments selected from, but not limited to, the following sectors: U.S. Treasury securities, corporate bonds, emerging market debt, and non-dollar denominated sovereign and corporate debt.[8] The Fund may invest up to 10% of its assets in MBS or in other asset-backed securities. This limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities, such as the GNMA, FHA, FNMA, and FHLMC.

The Fund may obtain exposure to the securities in which it normally invests by engaging in various investment techniques, including, but not limited to, forward purchase agreements, mortgage dollar roll, and "TBA" mortgage trading. The Fund also may invest directly in ETFs and other investment companies that provide exposure to fixed income securities similar to those securities in which the Fund may invest in directly. The Fund will normally invest at least 80% of its net assets in fixed income securities.

*Other Investments of the Funds*

Each Fund may invest up to an aggregate amount of 15% of its net assets in: (1) Illiquid securities; and (2) Rule 144A securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets. With respect to investment in illiquid securities, if changes in the values of a Fund's securities cause the Fund's holdings of illiquid securities to exceed the 15% limitation (as if liquid securities have become illiquid), the Fund will take such actions as it deems appropriate and practicable to attempt to reduce its holdings of illiquid securities. In addition, the Funds are considered non-diversified under the 1940 Act and can invest a greater portion of assets in securities of individual issuers than a diversified fund. The Funds intend to maintain the level of diversification necessary to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended. In addition, the Funds will not invest in non-U.S. equity securities, options contracts, futures contracts, or swap agreements.

Additional information regarding the Trust and the Shares, the Funds' investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and the Registration Statement, as applicable.[9]

## III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[13] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for each Fund's calculation of the net asset value ("NAV") at the end of the business day.[14] The NAV of each of the Funds will normally be determined as of the close of the regular trading session on the New York Stock Exchange ("NYSE") (ordinarily 4:00 p.m. Eastern Time) on each business day. Price information for the debt securities held by the Funds will be available through major market data vendors, and a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. The Funds' Web site will also include a form of the prospectus for the Funds, information relating to NAV, and other quantitative and trading information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will

[8] The Fund will invest only in securities that the Investment Adviser deems to be sufficiently liquid. While corporate bonds and emerging market debt generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment, at least 80% of issues of corporate bonds or corporate debt held by the Fund must have $200 million or more par amount outstanding.

[9] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[10] 15 U.S.C. 78f.

[11] 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).

[12] 17 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[14] On a daily basis, the Investment Adviser will disclose for each portfolio security or other financial instrument of the Funds the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[15] In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares to the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[16] Moreover, the Exchange represents that the Investment Adviser is affiliated with a broker-dealer and has implemented a "fire wall" with respect to the affiliated broker-dealer regarding access to information concerning the composition and/or changes to the Funds' portfolio.[17] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[18]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading and other information.

(5) For initial and/or continued listing, the Funds will be in compliance with Rule 10A–3 under the Act,[19] as provided by NYSE Arca Equities Rule 5.3.

(6) The Funds will not invest in non-U.S. equity securities, options contracts, futures contracts, or swap agreements.

(7) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[20] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therfore ordered,* pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSEArca–2011–11) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–13576 Filed 6–1–11; 8:45 am]

**BILLING CODE 8011–01–P**

[15] *See* NYSE Arca Equities Rule 8.600(d)(2)(D).

[16] *See* NYSE Arca Equities Rule 8.600(d)(2)(C)(ii). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[17] *See supra* note 5 and accompanying text. With respect to the Funds, the Exchange represents that the Investment Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Investment Advisers Act of 1940 ("Advisers Act") relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[18] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[19] *See* 17 CFR 240.10A–3.

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice: 7489]**

## 30-Day Notice of Proposed Information Collections: RPPR Public Diplomacy Surveys

**ACTION:** Notice of request for public comment and submission to OMB of proposed collections of information.

**SUMMARY:** The Department of State has submitted the following information collection requests to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Advancing Public Diplomacy Impact (APDI)—Public Diplomacy Participants Study.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Office of the Under Secretary for Public Diplomacy and Public Affairs, Office of Policy Planning and Resources, Evaluation and Measurement Unit, (R/PPR–EMU).
- *Form Number:* Survey number assigned as needed.
- *Respondents:* U.S. public diplomacy participants in select foreign countries.
- *Estimated Number of Respondents:* 3,300.
- *Estimated Number of Responses:* 3,300.
- *Average Hours Per Response:* 30 minutes per response.
- *Total Estimated Burden:* 1,650.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.
- *Title of Information Collection:* Advancing Public Diplomacy Impact—Public Diplomacy Non-Participants Study.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Office of the Under Secretary for Public Diplomacy

and Public Affairs, Office of Policy Planning and Resources, Evaluation and Measurement Unit, (R/PPR–EMU).

• *Form Number:* Survey number assigned as needed.

• *Respondents:* U.S. public diplomacy non-participants in select foreign countries.

• *Estimated Number of Respondents:* 3,300.

• *Estimated Number of Responses:* 3,300.

• *Average Hours per Response:* 30 minutes per response.

• *Total Estimated Burden:* 1,650 hours.

• *Frequency:* On Occasion.

• *Obligation to Respond:* Voluntary.

• *Title of Information Collection:* Advancing Public Diplomacy Impact (APDI)—General Population Survey (GPS).

• *OMB Control Number:* None.

• *Type of Request:* New Collection.

• *Originating Office:* Office of the Under Secretary for Public Diplomacy and Public Affairs, Office of Policy Planning and Resources, Evaluation and Measurement Unit, (R/PPR–EMU).

• *Form Number:* Survey number assigned as needed.

• *Respondents:* General population in select foreign countries.

• *Estimated Number of Respondents:* 12,000.

• *Estimated Number of Responses:* 12,000.

• *Average Hours per Response:* 30 minutes per response.

• *Total Estimated Burden:* 6,000 hours.

• *Frequency:* On Occasion.

• *Obligation to Respond:* Voluntary.

• *Title of Information Collection:* Electronic Media Engagement Evaluation.

• *OMB Control Number:* None.

• *Type of Request:* New Collection.

• *Originating Office:* Office of the Under Secretary for Public Diplomacy and Public Affairs, Office of Policy Planning and Resources, Evaluation and Measurement Unit, (R/PPR–EMU).

• *Form Number:* Survey number assigned as needed.

• *Respondents:* Internet users from select foreign countries.

• *Estimated Number of Respondents:* 8,000.

• *Estimated Number of Responses:* 8,000.

• *Average Hours Per Response:* 30 minutes per response.

• *Total Estimated Burden:* 4,000 hours.

• *Frequency:* On Occasion.

• *Obligation to Respond:* Voluntary.

• *Title of Information Collection:* Key Audience Analysis.

• *OMB Control Number:* None.

• *Type of Request:* New Collection.

• *Originating Office:* Office of the Under Secretary for Public Diplomacy and Public Affairs, Office of Policy Planning and Resources, Evaluation and Measurement Unit, (R/PPR–EMU).

• *Form Number:* Survey number assigned as needed.

• *Respondents:* Internet users in select foreign countries.

• *Estimated Number of Respondents:* 9,600.

• *Estimated Number of Responses:* 9,600.

• *Average Hours per Response:* 20 minutes per response.

• *Total Estimated Burden:* 3,200 hours.

• *Frequency:* On Occasion.

• *Obligation to Respond:* Voluntary.

**DATE:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from June 2, 2011.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

• *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** You may obtain copies of the proposed information collection and supporting documents by submitting a request to *RPPREMUdocs@state.gov* or by mail to RPPR EMU Paperwork Reduction Act Document Request, U.S. Department of State, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20037.

**SUPPLEMENTARY INFORMATION:**

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed collection of information is necessary to properly perform our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond.

*Abstract of proposed collections:*

The Department of State is requesting new information collections to evaluate the impact of U.S. public diplomacy efforts and to evaluate public opinion among the general populations in select foreign countries. These collections are part of a larger evaluation looking at the impact of U.S. public diplomacy efforts and foreign views toward the U.S. and U.S. foreign policy.

• The Advancing Public Diplomacy Impact (APDI) Public Diplomacy Participants Study collection will include a survey and a focus group of participants who have taken part in U.S. public diplomacy programs.

• The Advancing Public Diplomacy Impact (APDI) Public Diplomacy Non-Participants Study collection will include a survey using face-to-face interviews and a focus group of participants who have not taken part in U.S. public diplomacy programs in order to compare their responses to those participants who have taken part in U.S. public diplomacy programs.

• The Advancing Public Diplomacy Impact (APDI)-General Population Survey (GPS) collection will include a survey using face-to-face interviews and a focus group of participants who are representative of the general populations.

• The Electronic Media Engagement collection will include a survey and a focus group of participants designed to study how Internet users use different forms of social media and similar collaborative technologies to interact on Public Diplomacy themes in which they have interests.

• The Key Audience Analysis collection will include a survey of internet users designed to develop key audience profiles for public diplomacy outreach.

*Methodology:*

• For APDI participants, APDI non-participants, and APDI–GPS, the information collection will be accomplished through a focus group and a survey using face-to-face interviews or, whenever doing so will ease any burden on the participant while also protecting the participant's privacy, telephone or online interviews.

• For Electronic Media Engagement, the information collection will be accomplished through focus groups or Internet surveying applications available within each country. When the infrastructure of the foreign country does not permit electronic data collection, data may be collected by personal interviews. When data are being collected through focus groups, participants are recruited to match criteria defined on a country by country basis.

• For Key Audience Analysis, the information collection will be accomplished through Internet surveying applications available within each country.

Dated: May 20, 2011.

**Larry Schwartz,**

*Director, Policy, Planning and Resources (R/PPR), U.S. Department of State.*

[FR Doc. 2011–13705 Filed 6–1–11; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF STATE

**[Public Notice: 7490]**

### Certifications Pursuant to Public Law That 12 Nations Have Adopted Programs To Reduce the Incidental Capture of Sea Turtles in Their Shrimp Fisheries

**SUMMARY:** On April 22, 2011, the Department of State certified, pursuant to Section 609 of Public Law 101–162, that 12 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States. The Department also certified that the fishing environments in 26 other countries and one economy, Hong Kong, do not pose a threat of the incidental taking of sea turtles protected under Section 609.

**DATES:** *Effective Date:* On Publication.

**FOR FURTHER INFORMATION CONTACT:** Marlene M. Menard, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–5827.

**SUPPLEMENTARY INFORMATION:** Section 609 of Public Law 101–162 ("Section 609") prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) that the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State ("the Department"). Revised State Department guidelines for making the required certifications were published in the **Federal Register** on July 2, 1999 (Vol. 64, No. 130, Public Notice 3086).

On April 22, 2011, the Department certified 12 nations on the basis that their sea turtle protection programs are comparable to that of the United States: Colombia, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Nigeria, Pakistan, Panama, and Suriname.

The Department also certified 26 shrimp harvesting nations and one economy as having fishing environments that do not pose a danger to sea turtles. Sixteen nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible. They are: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Ten nations and one economy only harvest shrimp using small boats with crews of less than five that use manual rather than mechanical means to retrieve nets, or catch shrimp using other methods that do not threaten sea turtles. Use of such small-scale technology does not adversely affect sea turtles. The 10 nations and one economy are: the Bahamas, Belize, China, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, Peru, Sri Lanka, and Venezuela.

The Department certified Belize this year on a different basis than last year. Effective December 31, 2010, the Government of Belize passed a law banning all forms of trawling in its waters, including its exclusive economic zone. The ban remains in effect. As a result, the Department has certified Belize as a nation whose fishing environment does not pose a threat of the incidental taking of sea turtles.

On April 22, 2011, the Department decertified Madagascar. In the absence of a legitimate constitutional government in Madagascar since the 2009 coup d'état, relations between the United States and the de-facto Malagasy authorities have been extremely limited. The Department of State and NOAA have been unable to conduct a Government of Madagascar sea turtle protection program verification visit since September 2008. Without the ability to independently verify whether Madagascar has a sea turtle protection program comparable to that of the United States, the Department is unable to certify Madagascar this year.

The Department of State has communicated the certifications under Section 609 to the Office of Field Operations of U.S. Customs and Border Protection.

In addition, this Federal Register Notice confirms that the requirement for all DS–2031 forms from uncertified nations must be originals and signed by the competent domestic fisheries authority. This policy change was first announced in a Department of State media note released on December 21, 2004. In order for shrimp harvested with Turtle Excluder Devices (TEDs) in an uncertified nation to be eligible for importation into the United States under the exemption: "Shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States", the Department of State must determine in advance that the government of the harvesting nation has put in place adequate procedures to ensure the accurate completion of the DS–2031 forms. At this time, the Department has made such a determination only with respect to Australia, Brazil and France. Thus, the importation of TED-caught shrimp from any other uncertified nation will not be allowed. For Brazil, only shrimp harvested in the northern shrimp fishery are eligible for entry under this exemption. For Australia, shrimp harvested in the Exmouth Gulf Prawn Fishery, the Northern Prawn Fishery, the Queensland East Coast Trawl Fishery, and the Torres Strait Prawn Fishery are eligible for entry under this exemption. For France, shrimp harvested in the French Guiana domestic trawl fishery are eligible for entry under this exemption.

In addition, the Department has already made a determination with regard to wild-harvest shrimp harvested in the Spencer Gulf region in Australia. This product may be exported to the U.S. using a DS–2031 under the exemption for "shrimp harvested in a manner or under circumstances determined by the Department of State not to pose a threat of the incidental taking of sea turtles." An official of the Government of Australia still also must certify the DS–2031.

Dated: May 27, 2011.

**David A. Balton,**

*Deputy Assistant Secretary of State for Oceans and Fisheries.*

[FR Doc. 2011–13702 Filed 6–1–11; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF STATE

**[Public Notice 7468]**

### Notice of Closed Meeting (With Open Session) of the Cultural Property Advisory Committee

There will be a meeting of the Cultural Property Advisory Committee on Monday, June 27, 2011, from approximately 9 a.m. to 5 p.m., and on Tuesday, June 28, 2011, from approximately 9 a.m. to 1 p.m., at the U.S. Department of State, Annex 5, 2200 C Street, NW., Washington, DC.

During its meeting on Monday, June 27, the Committee will begin its review of a proposal to extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Certain Ethnological Material from the Colonial and Republican Periods of Bolivia [Docket No. DOS–2011–0092]. An open session to receive oral public comment on this proposal to extend will be held from 10 a.m. to 11 a.m.

On Tuesday, June 28, the Committee will conduct interim reviews of the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Objects and Materials from the Pre-Columbian Cultures of Guatemala, and of the Agreement Between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from Mali from the Paleolithic Era (Stone Age) to approximately the Mid-Eighteenth Century. Public comment, oral and written, will be invited at a time in the future should these MOUs be proposed for extension.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. §§ 2601 et seq.). The text of the Act and the subject MOUs/Agreement, as well as related information, may be found at *http://exchanges.state.gov/heritage/culprop/html.*

Persons wishing to attend the open session should notify the Cultural Heritage Center of the Department of State at (202) 632–6301 no later than June 10, 2011, 5 p.m. (EDT) to arrange for admission. Seating is limited. Special accommodation needs should be specified upon notification of attendance.

Portions of the meeting on June 27 and 28, will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h), the latter of which stipulates that

"The provisions of the Federal Advisory Committee Act shall apply to the Cultural Property Advisory Committee except that the requirements of subsections (a) and (b) of section 10 and 11 of such Act (relating to open meetings, public notice, public participation, and public availability of documents) shall not apply to the Committee, whenever and to the extent it is determined by the President or his designee that the disclosure of matters involved in the Committee's proceedings would compromise the Government's negotiation objectives or bargaining positions on the negotiations of any agreement authorized by this title."

Persons wishing to make an oral presentation at the public session on June 27 must request to be scheduled and must submit a written text of their oral comments no later than June 10, 2011, 5 p.m. (EDT) to allow time for distribution to Committee members prior to the meeting. Oral comments will be limited to allow time for questions from members of the Committee. All oral and written comments must relate specifically to the determinations under Section 303(a)(1) of the Convention on Cultural Property Implementation Act, 19 U.S.C. 2602, pursuant to which the Committee must make findings. This statute can be found at the web site noted above.

**ADDRESSES:** All written materials, including the written texts of oral statements, may be submitted via postal mail, commercial delivery, hand delivery, or through the eRulemaking Portal. If more than three (3) pages, 20 duplicates of written materials must be sent to the address below by commercial delivery. Those having access to the Internet and wishing to make a comment of three or fewer pages regarding this Public Notice, may do so through the Federal eRulemaking Portal (see below). This procedure facilitates public participation and implements section 206 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2915. It also supports Secretary of State Hillary Rodham Clinton's Greening Diplomacy Initiative which aims to reduce the State Department's environmental footprint and reduce costs. *Comments by fax or by e-mail will not be accepted.* Please submit comments once.

*Postal Mail or Commercial Delivery.* Cultural Heritage Center (ECA/P/C), SA–5, Fifth Floor, Department of State, Washington, DC 20522–0505.

- *Hand Delivery.* Cultural Heritage Center (ECA/P/C), Department of State, 2200 C Street, NW., Washington, DC 20037.
- *Federal eRulemaking Portal.* To submit comments electronically, go to *http://www.regulations.gov* and search on docket number *DOS–2011–0092.* Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the dockets, is available on the site under "How To Use This Site."

*Privacy:* Comments submitted in electronic form will be posted on the site *http://www.regulations.gov.* Because the comments will not be edited to remove any identifying or contact information, the Department of State cautions against including any information in an electronic submission that one does not want publicly disclosed (including trade secrets and commercial or financial information that may be considered privileged or confidential pursuant to 19 U.S.C. § 2605(i)(1)). The Department of State requests that any party soliciting or aggregating comments received from other persons for submission to the Department of State inform those persons that the Department of State 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.

Dated: May 25, 2011.

**Ann Stock,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 2011–13693 Filed 6–1–11; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice: 7467]**

### Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Bolivia

Notice of Proposal to Extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Certain Ethnological Material from the Colonial and Republican Periods of Bolivia.

The Government of the Republic of Bolivia has informed the Government of the United States of its interest in an extension of the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Certain Ethnological Material from the Colonial and Republican Periods of Bolivia (MOU), first entered into in 2001 and extended in 2006.

Pursuant to the authority vested in the Assistant Secretary for Educational and Cultural Affairs, and pursuant to the requirement under 19 U.S.C. 2602(f)(1), an extension of this MOU is hereby proposed.

Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee regarding this proposal will be requested.

A copy of the MOU, the Designated List of restricted categories of material, and related information can be found at the following Web site: *http://exchanges.state.gov/heritage/culprop.*

Dated: May 25, 2011.

**Ann Stock,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 2011–13697 Filed 6–1–11; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0143]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption from the diabetes mellitus standard; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 19 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before July 5, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0143 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 Federal Docket Management System (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." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 19 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

#### Qualifications of Applicants

*Russell L. Bassett*

Mr. Bassett, age 56, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bassett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bassett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from New York.

*Teddy L. Beach*

Mr. Beach, 55, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beach understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beach meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

*Franklin L. Bell*

Mr. Bell, 55, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class O operator's license from Nebraska.

*Jeffrey F. Borelli*

Mr. Borelli, 57, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Borelli understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Borelli meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds an operator license from Ohio.

*Dale E. Burke*

Mr. Burke, 66, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Burke understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

*James S. Campbell*

Mr. Campbell, 67, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Campbell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Campbell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

*Harry L. Claycomb*

Mr. Claycomb, 72, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Claycomb understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Claycomb meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Boyd L. Croshaw*

Mr. Croshaw, 59, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Croshaw understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Croshaw meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

*Gail R. Gehrke*

Mr. Gehrke, 61, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gehrke understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gehrke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

*Derek R. Haagensen*

Mr. Haagensen, 42, has had ITDM since 1981. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Haagensen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Haagensen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

*Martin J. Johnson*

Mr. Johnson, 60, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Shelley Kneeland, Jr.*

Mr. Kneeland, 60, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kneeland understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kneeland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Illinois.

*Brion T. Maguire*

Mr. Maguire, 35, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Maguire understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Maguire meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

*Mark D. McKee*

Mr. McKee, 56, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McKee understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McKee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Todd J. Smith*

Mr. Smith, 46, has had ITDM since 2006. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from New York.

*John J. Steigauf*

Mr. Steigauf, 52, has had ITDM since 2004. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Steigauf understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Steigauf meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

*Andrew C. Winsberg*

Mr. Winsberg, 26, has had ITDM since 2007. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Winsberg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Winsberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

*Nathan E. Woodin*

Mr. Woodin, 32, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Woodin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Woodin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Vicky A. Yernesek*

Ms. Yernesek, 55, has had ITDM since 2010. Her endocrinologist examined her in 2011 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Yernesek understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Yernesek meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2011 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Wisconsin.

**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. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR

52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: May 20, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–13604 Filed 6–1–11; 8:45 am]

BILLING CODE P

[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2011–0080]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt twenty-three individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions are effective June 2, 2011. The exemptions expire on June 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

#### Background

On April 11, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from twenty-three individuals and requested comments from the public (76 FR 20073). The public comment period closed on May 11, 2011 and no comments were received.

FMCSA has evaluated the eligibility of the twenty-three applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

#### Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible.

The September 3, 2003 (68 FR 52441) **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-three applicants have had ITDM over a range of 1 to 31 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the April 11, 2011, **Federal Register** notice and they will not be repeated in this notice.

#### Discussion of Comment

FMCSA did not receive any comments in this proceeding.

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

**Conditions and Requirements**

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Conclusion**

Based upon its evaluation of the twenty-three exemption applications, FMCSA exempts, Donovan A. Bloomfield, Kyle T. Brewer, Rastus A. Bryant, Jr., Daniel J. Cahalan, Bill R. Dubson, Paul C. Farley, Daniel E. Farmer, C. Shawn Fox, Brad S. Gray, Ken M. Jorgenson, Troy M. Keller, Edmund D. Kilmartin, III., Lonnie L. Little, Michael G. Moseley, William M. Munn, Jeffrey M. Sandler, Donald R. Sine, Jr., Edward C. Sinkhorn, Jr., Wanda S. Sloan, John C. Stephens, Francisco M. Torres, Dale R. Walton and Mark H. Wilcox from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 20, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–13606 Filed 6–1–11; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### [Docket No. FMCSA–2005–23238; FMCSA–2006–25246; FMCSA–2008–0106; FMCSA–2009–0086]

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 18 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective June 12, 2011. Comments must be received on or before July 5, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2005–23238; FMCSA–2006–25246; FMCSA–2008–0106; FMCSA–2009–0086, 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 or Courier:* 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 number 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 Federal Docket Management System (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 renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## Exemption Decision

This notice addresses 18 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 18 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Michael D. Abel, Donald Bostic, Jr., Andre G. Burns, Paul M. Christina, Kenneth W. Dunn, Thomas F. Ethier, Edward J. Grant, Johnny K. Hiatt, Richard S. Hoffman, Bruce McCabe, Jeffrey M. Mueller, George M. Nelson, Joseph E. Pfaff, Cecil R. Rhodes, Jerry G. Sexton, Mikiel J. Wagner, Christopher A. Weidner, Paul A. Wolfe.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 18 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (71 FR 5105; 71 FR 19600; 72 FR 180; 72 FR 9397; 73 FR 35194; 73 FR 48272; 73 FR 52456; 74 FR 19267, 74 FR 20523; 74 FR 28094). Each of these 18 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by July 5, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 18 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwiseshow that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 20, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–13617 Filed 6–1–11; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–1999–5578; FMCSA–2003–14504; FMCSA–2005–20560; FMCSA–2006–26066; FMCSA–2007–27515]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 18 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective June 13, 2011. Comments must be received on or before July 5, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–1999–5578; FMCSA–2003–14504; FMCSA–2005–20560; FMCSA–2006–26066; FMCSA–2007–27515, 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 or Courier:* 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 number 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 Federal Docket Management System (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 renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## Exemption Decision

This notice addresses 18 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 18 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Roosevelt Bell, Jr., David K. Boswell, Melvin M. Carter, Bernabe V. Cerda, Michael S. Crawford, Rex A. Dyer, Patrick J. Goebel, Thomas A. Gotto, Wilbur J. Johnson, Larry L. Morseman, Kenneth C. Reeves, Charles Junior Rowsey, James A. Strickland, Dustin N. Sullivan, Thomas E. Summers, Jr., Jon C. Thompson, Daniel E. Watkins, Tommy N. Whitworth.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 18 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 48504; 68 FR 19598; 68 FR 33570; 70 FR 17504; 70 FR 25878; 70 FR 30997; 71 FR 63379; 72 FR 1050; 72 FR 21313; 72 FR 27624; 72 FR 28093; 72 FR 32703; 74 FR 15586; 74 FR 23472). Each of these 18 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by July 5, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 18 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final

decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 20, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–13616 Filed 6–1–11; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 17, 2011, and comments were due by May 16, 2011. No comments were received.

**DATES:** Comments must be submitted on or before July 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** Cmdr Michael DeRosa, Maritime Administration, U.S. Merchant Marine Academy, 300 Steamboat Road, New York, NY 11024. *Telephone:* 516–726–5642; or *e-mail: derosam@usmma.edu.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* U.S. Merchant Marine Academy Candidate Application for Admission.

*OMB Control Number:* 2133–0010.

*Type Of Request:* Extension of currently approved collection.

*Affected Public:* Individuals desiring to become students at the U.S. Merchant Marine Academy.

*Forms:* KP 2–65.

*Abstract:* The collection consists of Parts I, II, and III of Form KP 2–65 (U.S. Merchant Marine Academy Candidate Application). Part I of the form is completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy.

*Annual Estimated Burden Hours:* 12,500 hours.

*Addresses:* Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

*Comments Are Invited on:* 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

**Authority:** 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: May 24, 2011.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–13690 Filed 6–1–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2011–0062; Notice 1]**

### Notice of Receipt of Petition for Decision That Nonconforming 2008–2010 M&V GmbH Siegmar Fzb Trailers Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 2008–2010 M&V GmbH Siegmar Fzb trailers are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2008–2010 M&V GmbH Siegmar Fzb trailers that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

**DATES:** The closing date for comments on the petition is July 5, 2011.

**ADDRESSES:** Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

*Instructions:* Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*How to Read Comments submitted to the Docket:* You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS, and has no substantially similar U.S.-certified counterpart, shall be refused admission into the United States unless NHTSA has decided that the motor vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Auto Enterprises of Birmingham, Michigan (Registered Importer 93–013) has petitioned NHTSA to decide whether 2008–2010 M&V GmbH Siegmar Fzb trailers that were not originally manufactured to conform to all applicable FMVSS are eligible for importation into the United States. Auto Enterprises contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS. Auto Enterprises submitted information with its petition intended to demonstrate that 2008–2010 M&V GmbH Siegmar Fzb trailers are capable of being modified to comply with all applicable standards.

Specifically, the petitioner claims that 2008–2010 M&V GmbH Siegmar Fzb trailers have safety features that comply with Standard Nos. 106 *Brake Hoses, 119 New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 Kilograms (10,000 Pounds) and Motorcycles,* and 224 *Rear Impact Protection.*

The petitioner also contends that 2008–2010 M&V GmbH Siegmar Fzb trailers are capable of being altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* conversion of the lighting power, control, and wiring systems from the original 24 volt system to a 12 volt system and installation of U.S.-conforming; front and rear clearance lamps; front, rear, and intermediate side marker lamps; rear identification lamps; taillamps; stop lamps; rear turn signal lamps; license plate lamps; and conspicuity treatment to achieve compliance with the standard.

Standard No. 109 *New Pneumatic Tires for Vehicles Other than Passenger Cars:* inspection of all vehicles and replacement of any nonconforming tires with ones that meet the standard.

Standard No. 110 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars:* Installation of conforming rims and a tire information placard to achieve compliance with the standard.

Standard No. 121 *Air brake systems:* The ABS braking diagnostic system must be converted from the original European configuration (which is fitted to the tractor unit) to a US complying system (fitted to the trailer). In addition, the original European EBS system will be removed and replaced with a *RSSplus Trailer ABS with Roll Stability Support* system manufactured by Meritor Wabco. With respect to compliance with the requirements of paragraphs S5.3.3 and S5.3.4 of FMVSS No. 121, petitioner states that brake actuation and release times can be verified by using the WabcoMeritor "ToolBox" diagnostics system. The petitioner also states that the existing ABS malfunction sensor and indicator lamp are located as required by paragraphs S5.2.3.2 and S5.2.3.3 of FMVSS No. 121.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 26, 2011.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2011–13691 Filed 6–1–11; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, July 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1–888–912–1227 or 718–488–3557.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday, July 12, 2011, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms.

Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the *Web site: http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13600 Filed 6–1–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Joint Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Monday, July 25, 2011, Tuesday, July 26, 2011, and Wednesday, July 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Monday, July 25, 2011, 8 a.m. to 4:30 p.m., Tuesday, July 26, 2011, 8 a.m. to 4:30 p.m., and Wednesday, July 27, 2011, 8 a.m. to 12 p.m. Pacific Time in Seattle, Washington at the Jackson Federal Building. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information and site location please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13601 Filed 6–1–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of Taxpayer Advocacy Panel Notice Improvement Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, July 7, 2011.

**FOR FURTHER INFORMATION CONTACT:** Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be held Thursday, July 7, 2011 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the *Web site: http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13602 Filed 6–1–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, July 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** Donna Powers at 1–888–912–1227 or 954–423–7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be held Tuesday, July 12, 2011, 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13603 Filed 6–1–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee

will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, July 26, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ellen Smiley at 1–888–912–1227 or 414–231–2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be held Tuesday, July 26, 2011 at 2 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the *Web site: http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13605 Filed 6–1–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, New Jersey, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, July 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1–888–912–1227 or 718–488–3557.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, July 12, 2011, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13607 Filed 6–1–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, July 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, July 20, 2011, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the *Web site: http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13608 Filed 6–1–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Alabama, Georgia, Florida, Louisiana, Mississippi, Tennessee, and Puerto Rico)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, July 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Donna Powers at 1–888–912–1227 or 954–423–7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Wednesday, July 6, 2011, at 3:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13609 Filed 6–1–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, and Wisconsin)

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, July 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ellen Smiley at 1–888–912–1227 or 414–231–2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, July 19, 2011, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13610 Filed 6–1–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Arizona, Arkansas, Colorado, Kansas, New Mexico, Missouri, Oklahoma, and Texas)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, July 21, 2011.

**FOR FURTHER INFORMATION CONTACT:** Patricia Robb at 1–888–912–1227 or 414–231–2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Thursday, July 21, 2011, at 11:30 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13611 Filed 6–1–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Idaho, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, July 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Timothy Shepard at 1–888–912–1227 or 206–220–6095

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Wednesday, July 6, 2011, at 11 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13612 Filed 6–1–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, July 21, 2011.

**FOR FURTHER INFORMATION CONTACT:** Janice Spinks at 1–888–912–1227 or 206–220–6098.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Thursday, July 21, 2011, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office,

915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13613 Filed 6–1–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Monday, July 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Marianne Ayala at 1–888–912–1227 or 954–423–7978.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be held Monday, July 25, 2011, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 26, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–13614 Filed 6–1–11; 8:45 am]

**BILLING CODE 4830–01–P**

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Part II

## Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 226

Endangered and Threatened Wildlife and Plants: Proposed Rulemaking To Revise Critical Habitat for Hawaiian Monk Seals; Proposed Rule

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 226**

**[Docket No. 110207102–1136–01]**

**RIN 0648–BA81**

## Endangered and Threatened Wildlife and Plants: Proposed Rulemaking To Revise Critical Habitat for Hawaiian Monk Seals

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** We, the National Marine Fisheries Service (NMFS), propose revising the current critical habitat for the Hawaiian monk seal (*Monachus schauinslandi*) by extending the current designation in the Northwestern Hawaiian Islands (NWHI) out to the 500-meter (m) depth contour and including Sand Island at Midway Islands; and by designating six new areas in the main Hawaiian Islands (MHI), pursuant to section 4 of the Endangered Species Act (ESA). Specific areas proposed for the MHI include terrestrial and marine habitat from 5 m inland from the shoreline extending seaward to the 500-m depth contour around: Kaula Island, Niihau, Kauai, Oahu, Maui Nui (including Kahoolawe, Lanai, Maui, and Molokai), and Hawaii (except those areas that have been identified as not included in the designation). We propose to exclude the following areas from designation because the national security benefits of exclusion outweigh the benefits of inclusion, and exclusion will not result in extinction of the species: Kingfisher Underwater Training area in marine areas off the northeast coast of Niihau; Pacific Missile Range Facility Main Base at Barking Sands, Kauai; Pacific Missile Range Facility Offshore Areas in marine areas off the western coast of Kauai; the Naval Defensive Sea Area and Puuloa Underwater Training Range in marine areas outside Pearl Harbor, Oahu; and the Shallow Water Minefield Sonar Training Range off the western coast of Kahoolawe in the Maui Nui area. We solicit comments on all aspects of the proposal, including information on the economic, national security, and other relevant impacts. We will consider additional information received prior to making a final designation.

**DATES:** Comments on this proposed rule to designate critical habitat must be received no later than August 31, 2011. A public hearing will be held promptly if any person so requests by August 16, 2011. Notice of the date, location, and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

**ADDRESSES:** You may submit comments identified by 0648–BA81 by any one of the following methods:

- *Electronic Submissions:* Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or hand-delivery:* Submit written comments to Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814, Attn.: Hawaiian monk seal proposed critical habitat.

*Instructions:* Comments must be submitted to one of these two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter "NA" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The petition, 90-day finding, 12-month finding, draft biological report, draft economic analysis report, draft 4(b)(2) report, and other reference materials regarding this determination can be obtained via the NMFS Pacific Islands Regional Office Web site: *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html* or by submitting a request to the Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, Attn: Hawaiian monk seal proposed critical habitat. Background documents on the biology of the Hawaiian monk seal, the July 2, 2008, petition requesting revision of its critical habitat, and documents explaining the critical habitat designation process, can be downloaded from *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html,* or requested by phone or e-mail from the NMFS staff in Honolulu (area code 808) listed under **FOR FURTHER INFORMATION CONTACT**. The October 3, 2008, 90-day finding (73 FR 57583), the public comments received on the 90-day finding, and the June 12, 2009, 12-month finding (74 FR 27988), can be viewed at *http://www.regulations.gov* by searching for docket number "NOAA–NMFS–2008–0290".

**FOR FURTHER INFORMATION CONTACT:** Jean Higgins, NMFS, Pacific Islands Regional Office, (808) 944–2157; Lance Smith, NMFS, Pacific Islands Regional Office, (808) 944–2258; or Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401.

**SUPPLEMENTARY INFORMATION:**

### Background

The Hawaiian monk seal (*Monachus schauinslandi*) was listed as endangered throughout its range under the ESA in 1976 (41 FR 51611; November 23, 1976). In 1986, critical habitat for the Hawaiian monk seal was designated at all beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 10 fathoms (18.3 m) around Kure Atoll, Midway Islands (except Sand Island), Pearl and Hermes Reef, Lisianski Island, Laysan Island, Gardner Pinnacles, French Frigate Shoals, Necker Island, and Nihoa Island in the NWHI (51 FR 16047; April 30, 1986). In 1988, critical habitat was expanded to include Maro Reef and waters around previously designated areas out to the 20 fathom (36.6 m) isobath (53 FR 18988; May 26, 1988).

On July 9, 2008, we received a petition dated July 2, 2008, from the Center for Biological Diversity, Kahea, and the Ocean Conservancy (Petitioners) to revise the Hawaiian monk seal critical habitat designation (Center for Biological Diversity, 2008) under the ESA. The Petitioners sought to revise critical habitat by adding the following areas in the MHI: key beach areas; sand spits and islets, including all beach crest vegetation to its deepest extent inland; lagoon waters; inner reef waters; and ocean waters out to a depth of 200 m. In addition, the Petitioners requested that designated critical habitat in the NWHI be extended to include Sand Island at Midway, as well as ocean waters out to a depth of 500 m (Center for Biological Diversity, 2008).

On October 3, 2008, we announced in our 90-day finding that the petition presented substantial scientific information indicating that a revision to the current critical habitat designation may be warranted (73 FR 57583; October 3, 2008). On June 12, 2009, in the 12-month finding, we announced that a revision to critical habitat is warranted because of new information available regarding habitat use by the Hawaiian monk seal, and we announced our intention to proceed toward a proposed rule (74 FR 27988; June 12, 2009). Additionally, in the 12-month finding we identified the range of the species as throughout the Hawaiian Archipelago and Johnston Atoll (74 FR 27988; June 12, 2009). Although petitioned to designate areas identified by specific boundaries or concepts (*i.e.,* "key" areas), we evaluated habitat needs for the species, including all areas within the identified range to best realize the conservation goals and needs of the species. This proposed rule describes the proposed critical habitat designation, including supporting information on Hawaiian monk seal biology, distribution, and habitat use, and the methods used to develop the proposed designation.

Under section 4(b)(2) of the ESA, we must consider the economic impacts, impacts to national security, and other relevant impacts of designating any particular area as critical habitat. We have the discretion to exclude an area from designation as critical habitat if the benefits of exclusion (*i.e.,* the impacts that would be avoided if an area was excluded from the designation) outweigh the benefits of designation (*i.e.,* the conservation benefits to the Hawaiian monk seal if an area was designated), so long as exclusion of the area will not result in extinction of the species. This evaluation process introduces various alternatives to the revision of designated critical habitat for the Hawaiian monk seal, all of which we considered. The alternative of not revising the designated critical habitat for Hawaiian monk seals would impose no additional economic, national security, or other relevant impacts, but would not provide any additional conservation benefit to the species. This alternative was considered and rejected because such an approach does not meet the legal requirements of the ESA and would not provide for the conservation of the species based on the best available science. The alternative of designating all potential critical habitat areas (*i.e.,* no areas excluded) also was considered and rejected because, for several areas, the national security benefits of exclusion outweighed the benefits of designation, and we determined that exclusion of these areas would not significantly impede conservation or result in extinction of the species.

An alternative to designating critical habitat within all of the areas considered for designation is the designation of critical habitat within a subset of those areas. Exclusion under section 4(b)(2) of the ESA of one or more of the particular areas considered for designation would reduce the total impacts of designation. The determination of which particular areas and how many to exclude is subject to the Secretary's discretion after the impacts have been evaluated in accordance with section 4(b)(2) of the ESA. This evaluation was conducted for each area and is described in detail in the draft ESA 4(b)(2) report (NMFS, 2010b). Under this preferred alternative we propose to exclude 5 particular areas within the areas considered. We determined that the exclusion of these areas would not significantly impede the conservation of Hawaiian monk seals nor result in extinction of the species. We selected this as the preferred alternative because it results in a critical habitat designation that provides for the conservation of the Hawaiian monk seal while reducing the national security impacts. This alternative also meets ESA and joint NMFS and U.S. Fish and Wildlife Service (USFWS) regulations concerning critical habitat at 50 CFR part 424.

*Hawaiian Monk Seal Natural History and Ecology*

In the following sections, we describe the natural history of the Hawaiian monk seal as it relates to the habitat needs of the species. Hawaiian monk seals are members of the Phocidae family, also known as the true seals, which are characterized by a lack of external ear and an inability to draw the hind-flippers under the body for movement on land. The Hawaiian monk seal falls within the primitive genus *Monachus.* Only two other species of seal occur in this genus, the recently extinct Caribbean monk seal (*M. tropicalis*) and the critically endangered Mediterranean monk seal (*M. monachus*). These three monk seal species were widely dispersed geographically (*i.e.,* in the Hawaiian Archipelago, the Caribbean, and the Mediterranean), and disagreement remains regarding the historical biogeography of the monachine seals' origin and dispersal (Repenning and Ray, 1977; Fyler *et al.,* 2005; Arnason *et al.,* 2006). Regardless of the debate over geographic origin or chronology, the closure of the Central American Seaway would indicate that Hawaiian monk seals were separated from the Caribbean species at least 3 million years ago (mya) (Fyler *et al.,* 2005). At this time period geologically, Hawaiian monk seals would have been able to exploit habitat in the NWHI as well as utilize some habitat in the MHI, including Kauai and Niihau, which were forming as early as 5 and 4.9 mya, respectively (Juvik and Juvik, 1998).

Hawaiian monk seals are wide-ranging, air-breathing aquatic carnivores that spend a majority of their time in the ocean, but continue to rely on terrestrial habitat. Monk seals utilize aquatic habitat for foraging, socializing, mating, resting, and traveling. Adept at propulsion in the water, individual monk seals may travel hundreds of miles in a few days (Littnan *et al.,* 2006) and dive to more than 500 m (1,600 ft) (Parrish *et al.,* 2002). Although a majority of its time is spent in the water, like many other pinnipeds, the Hawaiian monk seal utilizes terrestrial habitat to rest, avoid predators, molt, pup (give birth), and nurse. In contrast to commonly recognized pinnipeds such as sea lions, walrus, and harbor seals, which often haul out in groups of larger numbers, the Hawaiian monk seal is considered solitary, often hauling out individually. The solitary nature extends both on land and in the water; however, monk seals may congregate in small numbers (*e.g.,* males may haul out with and guard females, or several animals may be found hauled out in relative proximity to one another) in favorable haul-out areas (Antonelis *et al.,* 2006).

Adult monk seals reach a length of 2.3 m (7.5 ft) and weigh up to 273 kg (600 lb). On average the adult males are smaller in size than females (NMFS, 2007a). It is thought that Hawaiian monk seals have a lifespan of up to 30 years in the wild (NMFS, 2007a). Females reach breeding age at about 5 to 11 years of age (NMFS, 2010d) depending on their condition. Little is known regarding the sexual maturation of males of the species, but behavior and size suggest similar maturation rates to that of the females (Antonelis *et al.,* 2006). Mating occurs at sea, and gestation is thought to be approximately 11 months. Females typically will haul out on land near the birth site and give birth to a single pup (Johanos *et al.,* 1994). Monk seal births are most common between February and August, but births have been documented at all times of the year (NMFS, 2007a). Upon birth the female will nurse the pup for

approximately 6 weeks; throughout this time period the mother remains with the pup usually fasting and decreasing in mass (Kenyon and Rice, 1959). The nursing period concludes with an abrupt weaning when the mother returns to the marine environment to forage, leaving the pup on its own (Johanos *et al.,* 1994). Females will mate about 3–4 weeks after weaning her pup, and 5–6 weeks after mating she will haul out to molt (NMFS, 2007a). The weaned pups are left to teach themselves to successfully forage. While their foraging skills develop, they depend on fat stores built up during the nursing period, resulting in considerable weight loss (NMFS, 2007a). Juveniles (up to 3 years old) are typically longer but thinner than recently-weaned pups, and juveniles in the NWHI typically do not regain their post-weaning weight until approximately 2 years of age (Johanos *et al.,* 1994).

Adult seals appear silvery white ventrally with dark silvery tinged brown or slate gray pelage (fur) dorsally, and as the hair ages, the ventral pelage takes on a yellow tinge while the dorsal pelage may appear dull brown or darker (Kenyon and Rice, 1959). When monk seals stay at sea for an extensive period, they may develop a red or green tinge from algal growth on their pelage (Kenyon and Rice, 1959). Monk seals undergo an annual molt, which is termed a catastrophic molt because the entire layer of pelage (skin and hair) is shed, leaving a new silvery grey coat underneath. During their annual molt, Hawaiian monk seals may haul out on land, staying ashore 10–14 days or more (NMFS, 2007a). At birth, pelage is black and may occasionally be marked with small white patches, referred to as natural bleaches (Kenyon and Rice, 1959). The black pelage is lost during the postnatal molt, which occurs around the time of weaning.

*Range*

In the 12-month finding (74 FR 27988; June 12, 2009), we identified the range of the Hawaiian monk seal to include habitat throughout the Hawaiian Archipelago and Johnston Atoll. This determination was based on pupping (birth) and sighting data from the Hawaiian Archipelago collected by the NMFS Pacific Islands Fisheries Science Center (PIFSC), Protected Species Division (PSD). Verified past accounts from Johnston Atoll were used to determine that the Atoll may be considered as part of the geographical area occupied by the species (NMFS, 2001). Unconfirmed sightings of Hawaiian monk seals from Palmyra Atoll (1,800 km south of NWHI); Wake Island (2,000 km southwest of NWHI); Bikini Atoll and Mejit Island in the Marshall Islands (2,400 km southwest of NWHI) (NMFS, 2010c) were recognized, but substantial evidence was not found to incorporate these areas into the species' range. In discussing the range of the species, we also acknowledged that animals have been historically relocated to manage serious threats to the population or individual animals. Relocations include: 21 males from the NWHI to the MHI, three females from the MHI to the NWHI, 11 males from the NWHI to Johnston Atoll, and 1 male from the MHI to Johnston Atoll. Female Hawaiian monk seals have not been relocated to the MHI.

*Population Status and Trends*

The current Hawaiian monk seal population is estimated at 1,161 individuals (NMFS, 2009). The estimate includes the sum of estimated abundances at the six main NWHI breeding subpopulation sites, an extrapolation of counts at Necker and Nihoa Islands, and an estimate of minimum abundance in the MHI (NMFS, 2009). Minimum population estimates for 2008 based on the number of seals identified from the six main NWHI subpopulations was 913 seals, and for the MHI, 113 seals (NMFS, 2009). Additional information regarding the methods used to determine estimates may be found in the NMFS annual stock assessment reports. The breeding subpopulations identified are geographically separated, but re-sights of identified animals indicate seal movement among the NWHI, among the MHI, and, on rare occurrence, from the NWHI to the MHI (Littnan *et al.,* 2006; NMFS, 2009). The complete history of Hawaiian monk seal population status and trends is unknown; however, data and historical accounts do indicate impacts to population trends from human exploitation and disturbance. The following is a review of pertinent information and trends with regard to population status.

The first beach counts of Hawaiian monk seals in the NWHI occurred in the late 1950s, but prior to that time period human-influenced declines in population can be inferred from historical accounts. The first written accounts during Lisianski's exploration in the 1800s indicated seals of the NWHI being exploited for oil, pelts, or food (Ragen, 1993). Reports from the end of the same century highlight the impact of early human exploitation on the seal population, with accounts of no seals being seen on extended visits to Midway and Laysan, areas where numerous seal sightings were indicated in the past (Ragen, 1999). Following the period of exploitation in the 1800s, areas in the NWHI were settled for entrepreneurial and military reasons. Descriptions of seal sightings at this time indicate behavioral changes, including seals showing a habitat preference for sites less accessible to human inhabitants (Ragen, 1999). Starting in the late 1950s, counts were made at the islands almost every year, with a high count of 1,206 seals recorded in the spring of 1958 (NMFS, 1983). Although these counts do not provide a total population estimate (because the proportion of the total included in the count was not determined), the beach counts do demonstrate a decline between the late 1950s and mid-to-late 1970s. Counts in the 1970s ranged from 500–600 seals, less than half the high counts from the late 1950s (NMFS, 1983). This decrease was most evident in the western portions of the range and has been associated with human disturbance related to military settlement (Kenyon and Rice, 1959; Ragen, 1993). Military activities and presence eventually ceased at these sites, and the islands have been managed as a refuge; in 2006 the islands and surrounding waters were incorporated into the Northwestern Hawaiian Islands Marine National Monument, now renamed Papahanaumokuakea Marine National Monument. Periods of decline and stability have been documented since the area has been managed as a refuge, with the most recent period of decline beginning in 2001 (NMFS, 2007a). In 2008, beach counts of juveniles and adults (*i.e.,* all seals except pups) were 68 percent lower than those of the late 1950s (NMFS, 2009). Total abundance at the six primary NWHI sites (French Frigate Shoals, Laysan, Lisianski, Pearl and Hermes, Midway, and Kure) is declining at a rate of about 4.5 percent per year (NMFS, 2009). While the earlier declines are marked by human exploitation and disturbance, the current declines in the NWHI may be driven by food limitations and other sources of mortality, which disproportionally impact juvenile seal survival and consequently reduce recruitment into breeding age classes. With fewer adults of breeding age, the current age structures of the NWHI subpopulations indicate that declines are likely to continue for at least the next decade (Baker *et al.,* 2010). A detailed account of the Hawaiian monk seal population status and trends in the NWHI is provided in the recovery plan (NMFS, 2007a).

It is generally accepted that Hawaiian monk seals are native to the islands of the northwest, as discussed earlier; however, conflicting views remain regarding Hawaiian monk seal historical use of the MHI. The lack of seal references in the Hawaiian oral tradition has led some to believe that Hawaiian monk seal use of this region is a recent phenomenon. However, fossil remains of seal bones discovered at an archeological site from the Island of Hawaii dating from 1,400–1,760 years ago (Rosendahl, 1994) has led support to an alternate view suggesting that Hawaiian monk seals may have been forced to peripheral habitat by exploitation or disturbance during early Polynesian settlement (Ragen, 1993; Baker, 2004; Baker and Johanos, 2004). Anecdotal evidence, including the Polynesian extirpation of other avian species during early settlement (Olson and James, 1982; Diamond *et al.,* 1989), the availability of coastal habitat (Juvik and Juvik, 1998), and the monk seal presence in the Pacific basin well before the Polynesian settlement, lends additional credence to this theory (Olson and James, 1982; Diamond *et al.,* 1989; Juvik and Juvik, 1998; Athens *et al.,* 2002; Kirch *et al.,* 2004; Fyler *et al.,* 2005). Thus, Polynesian settlement of the MHI may have driven Hawaiian monk seals to the NWHI, where human settlements were limited by the availability of fresh water (Ragen, 1999; Baker and Johanos, 2004). In summary, this view presents the current growth and dispersal of the Hawaiian monk seal population in the MHI as a re-colonization event.

More recent MHI history provides the historical accounts of seal sightings indicating the occasional presence of seals, including sightings from as early as 1900 and later accounts spanning into the 1950s throughout the MHI (Bailey, 1952; Kenyon and Rice, 1959). Niihau residents reported that seals appeared regularly after 1970 (Baker and Johanos, 2004), and NMFS PIFSC's records from 1980–1986 reveal 125 seal sightings recorded throughout the MHI (NMFS, 2010e). These sightings do not represent a discrete number of seals, because the sightings are incidental and seal identification is unknown; however, it does reveal the presence of seals throughout the islands in the early 1980s prior to the first critical habitat designation. By as early as 1994, a small naturally-occurring population of male and female monk seals was present in the MHI. Since the mid-1990s, an increasing number of documented sightings and annual births of monk seal pups have occurred in the MHI. Estimates using systematic surveys or sightings of uniquely identified individuals within the MHI indicate an increase in numbers as demonstrated by the following estimates: 45 individuals reported in 2000, 77 individuals in 2005, and 113 individuals in 2008 (NMFS, 2007b; NMFS, 2009). The growth in numbers in the MHI is not likely to be a consequence of increased migration from the NWHI, since only 5 seals have been documented to have migrated from the NWHI to the MHI since the 1980s when regular tagging efforts began (Baker *et al.,* 2010). It is likely that seals in the MHI are growing in numbers due to the increase in births and have been dispersing from under-documented areas (such as Niihau) to the rest of the chain (Baker and Johanos, 2004).

*Northwestern Hawaiian Islands vs. Main Hawaiian Islands*

There is no genetic evidence suggesting monk seals occurring in any part of the archipelago are genetically distinct from monk seals elsewhere in the range (Schultz *et al.,* 2009); thus, the Hawaiian monk seal consists of one population distributed throughout the Hawaiian Archipelago. While the population is not genetically distinct in the NWHI and MHI, differences between Hawaiian monk seal population status, habitat, research efforts, and threats to the seals utilizing these two regions support a separate approach to management and conservation efforts (Baker *et al.,* 2010). The following discussion summarizes some of the differences identified between the two management areas and refers to the seals in these geographic areas as separate populations due to these differences.

Recruitment trends differ between the NWHI and MHI. In the NWHI, many of the reproductive subpopulations are experiencing a decline in breeding subpopulations that is attributed primarily to food limitation (NMFS, 2007a). The impacts resulting from food limitation are most strongly expressed in poor juvenile condition and survival, and low age-specific reproductive rates (delayed maturity) (Antonelis *et al.,* 2006; NMFS, 2007a). High juvenile mortality rates result in fewer females achieving reproductive maturity, thereby causing an imbalanced age structure, which in turn contributes to the continued decline. In contrast, the MHI portion of the population is increasing. This is evident by the growing number of identified individuals and number of pups born annually (Baker and Johanos, 2004). In addition to the difference in population growth, monk seals in the MHI appear to be in better physical condition than those in the NWHI. In general, MHI females begin reproducing at a younger age, and attain higher birth rates than females in the NWHI (Baker *et al.,* 2010). In 2008, a 4 year old MHI female became the youngest documented Hawaiian monk seal of known age to pup (NMFS, 2010f). The successfully reproducing females of the MHI are also producing robust pups. Measurements from axillary girths and standard lengths of weaned pups from the MHI were significantly greater in comparison to the same measurements from weaned pups from the NWHI, which are thought to have better foraging conditions for the mothers in the MHI (Baker and Johanos, 2004; Baker *et al.,* 2006). Additionally, the estimated survival from weaning to age 1 is 77 percent in the MHI, which is much higher than the 42–57 percent survival estimated for breeding subpopulations in the NWHI. This disparity in population status between the two regions is well reflected in recent efforts to estimate population growth and decline of monk seals in the separate areas. If demographic trends continued at the current rates, the MHI and NWHI portions of the population would equalize in 15 years (Baker *et al.,* 2010).

Factors influencing foraging success may explain the disparity between the two regions. These factors can be attributed to an inequity in ecological competition on several levels. First, low numbers of monk seals in the MHI may point to a greater per capita availability of prey than in the NWHI (Baker and Johanos, 2004). Specifically, the lower number of seals in the MHI across a large expanse of available foraging habitat allows for less intra-specific competition for food resources. Secondly, the NWHI is located within the Papahanaumokuakea Marine National Monument, one of the largest and best-protected marine areas in the world, where commercial fishing efforts have been minimized in past years and recently completely ceased. The protected ecosystem of the NWHI, in comparison to the MHI, has a greater number of large predators. The sharks, jacks, and other demersal fish that have been observed to compete directly with monk seals in the NWHI are much less abundant in the MHI. In other words, inter-specific competition is likely lower in the MHI (Baker and Johanos, 2004; Parrish, 2008). Additionally, competition between humans and monk seals may be limited in the MHI because seals prefer small (usually less than 20 cm, or 8 in) eels, wrasses, and other benthic species not commonly sought

by fishermen (Parrish *et al.,* 2000). All of these factors appear to positively influence the population status of monk seals in the MHI at this time, but these favorable dynamics may shift as the population grows in the MHI.

Additional differences between the two regions are further reflected in the threats to the species, and, consequently, in the management priorities and activities for each population, which are discussed in detail in the Hawaiian Monk Seal Recovery Plan (NMFS, 2007a). One of the threats discussed includes that of habitat loss (NMFS, 2007a). The low-lying islets and islands of the NWHI are particularly susceptible to sea level rise, an impact that results from several factors associated with climate change, including thermal expansion of the warming oceans and melting of glaciers and ice caps (Baker *et al.,* 2006). In the 20th century sea levels rose 15 cm, and increases are expected to continue (Baker *et al.,* 2006). As a result of sea level rise, important pupping and haul-out habitat may be lost (Baker *et al.,* 2006). While the threat of sea level rise may be accelerated by anthropogenic forces, human activities which influence this threat are considered to be of a complex global scale. Management efforts in the NWHI area would more likely focus on the preservation of specific areas for pupping and hauling out and may include regular monitoring for changes in elevation at the various islets and islands. Long-term mitigation planning at specific sites may also play a role in conserving habitat in the NWHI (Baker, 2006). In the MHI, habitat loss is equally a threat, but in the MHI, coastal anthropogenic development plays a pronounced role by exacerbating the threat to coastal habitat. Like most other coastal states, Hawaii's dependence on coastal resources has led to increased development of shorelines. In response to natural erosion processes, urban shorelines were often hardened to protect assets. Efforts to harden shorelines alter the natural hydrodynamic system of waves and currents, affecting sand transport rates that control the erosion-accretion process of beaches (Defeo *et al.,* 2009). Consequences of armoring vary depending on the placement of the structure and the surrounding hydrodynamics, but have included passive erosion on the armored beach, flanking erosion of shorelines adjacent to engineered structures, and possibly the enhanced erosion on protected coasts (Venter *et al.,* 2006). On Oahu past reliance on shoreline armoring to mitigate coastal erosion has resulted in widespread beach narrowing and sand loss (Fletcher *et al.,* 1997). Current management measures in the MHI are aimed at coastal setbacks (*i.e.,* planning development inland from the water's edge and the threat of erosion), but the increased demand for the use of coastal areas for industry, recreation, and private use may put continued pressure on developers to increase access to "new" beach areas. In the future, remote beaches may be squeezed between seaward directed development and rising sea levels, leaving no room for natural sediment dynamics (Defeo *et al.,* 2009). As the number of Hawaiian monk seals increases in the MHI and development continues, available habitat for hauling out and pupping will become increasingly important.

Direct anthropogenic threats from activities within the Papahanaumokuakea Marine National Monument have been minimized through management measures aimed at protecting the unique resources within the NWHI. Despite being located in this highly protected area, the Hawaiian monk seals continue to face threats in the NWHI that require management. Twenty years of robust population monitoring data in the NWHI aids in making these management decisions. Data reflecting poor juvenile survival has focused management efforts towards positively influencing population trajectories by increasing efforts which support monk seal health during the fragile first years. Conversely, the MHI population is only in the early stages of scientific monitoring efforts, as previous research efforts were concentrated towards NWHI. Currently, a great deal of information regarding MHI seals is received from a growing volunteer network, and management efforts in the MHI have been focused on threats centered on anthropogenic influences. Growth in seal numbers in the MHI has increased human and seal interaction, and many coastal residents and visitors are unfamiliar with the specific needs of the species. This increased overlap in use of coastal and marine habitat has led to fishery interactions (hookings and entanglements), disturbance and harassment of seals, and sometimes injuries to humans (Baker *et al.,* 2010). Impacts from pollution and runoff into the aquatic environment also pose health hazards to the species in the MHI; these threats are not factors considered in the NWHI (Littnan *et al.,* 2006). In addition to these unintentional anthropogenic threats, three seals were recently documented shot and killed in the MHI.

As discussed above, differences between the NWHI and MHI portions of the population present unique research and management challenges for the Hawaiian monk seal. With the continued decline in numbers and the fragile status of reproductive classes in the NWHI, the survival of the species as a whole may become increasingly dependent on the success of the portion of the population in the MHI along with management efforts taken to ensure that success.

*Habitat*

The Hawaiian monk seal depends on aquatic environments as well as terrestrial environments for survival. While Hawaiian monk seals spend a majority of their time in the water, the terrestrial component of their habitat plays a vital role throughout all life stages. Monk seals utilize terrestrial habitat to haul out for resting, molting, pupping, nursing and avoiding predators. Since monk seals may remain at sea for several days or more at a time, resting on land is essential to conserve energy. Resting commonly occurs on sandy beaches, but may also occur on rocky shores, rock ledges, emergent reefs, and even shipwrecks (Antonelis *et al.,* 2006). While on shore, monk seals may take shelter from wind and rain under shoreline vegetation. When ocean conditions are rough, monk seals may spend a greater proportion of time resting on land. Resting on land may be for a few hours to several days at a time (Antonelis *et al.,* 2006).

Terrestrial habitat is essential for pupping and nursing of pups. Pupping and nursing areas are usually sandy beaches adjacent to shallow protected water (Westlake and Gilmartin, 1990). Individual females appear to favor certain pupping locations, returning to them year after year. Pregnant females come ashore a few days before giving birth to a pup weighing approximately 16 kg (35 lb). Pups nurse for 5 to 6 weeks (Johanos *et al.,* 1994) and weigh 50–100 kg (110–220 lb) at weaning. During nursing, mother and pup remain in close proximity to each other, and the mother is protective of her pup. Although the pup is able to swim at birth, nursing is done on land and the mother-pup pair usually remains on land for the first few days after the pup is born. The mother gradually begins swimming with her pup in the shallows, returning to the general area around the pupping site. As weaning approaches, the mother-pup pair spends more time in the water, venturing further away from the pupping site. After weaning, pups typically remain in the shallows near their nursing areas for several

weeks before venturing into deeper foraging areas (Kenyon and Rice, 1959; Henderson, 1988). Hauling out on land is also required for molting, when old pelage is shed. Monk seals usually remain on land during the annual molting; the process lasts approximately 1 to 2 weeks (Kenyon and Rice, 1959).

Hawaiian monk seals utilize the aquatic components of their environment for thermoregulating, resting, interacting, mating, and foraging. Observation of 24 adult male monk seals wearing animal-borne video cameras showed that greater than 50 percent of the time spent underwater was spent resting or interacting with other seals and that much of these activities were spent in shallower depths (Parrish, 2000; Parrish, 2004). Resting may also occur at sea or in shallow, submerged caves. Little has been observed regarding monk seals' mating behavior in the marine environment; however, gains in foraging research provide new insight into monk seal foraging since the time of the previous critical habitat designation.

Previous understandings of monk seal foraging assumed monk seals were feeding on localized prey species on near shore coral reef structures and on offshore banks surrounding the haul-out areas in the NWHI (NMFS, 1983). Although transit and deeper diving behavior was acknowledged in the 1983 recovery plan, little was known regarding monk seal foraging behavior at deeper depths, and the extent and frequency of foraging transits were not well understood. Information from satellite transmitter studies began to transform these concepts by regularly demonstrating seals transiting to neighboring banks (Parrish and Littnan, 2007). Additionally, digestion studies began to illustrate that scat found on the beach might only represent prey from close reefs and not the seals' entire diet (Goodman-Lowe, 1998; Goodman-Lowe *et al.,* 1999; Parrish and Littnan, 2007). Later, Crittercam footage (or head-mounted cameras) revealed seals ignoring reef fish in the coral shallows in favor of foraging on deeper atoll slopes and neighboring banks. Additionally, depth recordings from these animals demonstrated foraging at depths greater than previously recognized (Parrish *et al.,* 2000; Stewart, 2006). These data combined have reshaped the knowledge of how seals utilize their foraging habitat and where seals are feeding.

Today monk seals are considered to be foraging generalists consuming a wide variety of prey species. Goodman and Lowe (1998) identified inshore, benthic, and offshore teleosts as the most represented prey items in monk seal scat, followed by cephalopods and crustaceans. From the 940 scats sampled, the study was able to identify 31 families of teleosts and 13 families of cephalopods (Goodman and Lowe, 1998). Additionally, fatty acid analysis of the monk seal diet has begun to identify an even broader number of prey species consumed by the Hawaiian monk seal (Iverson, 2006). Fatty acid analysis studies have also demonstrated substantial variation in diet among individuals, demographic groups (between juveniles and adults/sub adults), and locations (Iverson, 2006), indicating that individual monk seal foraging preferences and capabilities play a role in selection of foraging habitat. Recently increased resolution of regurgitation samples has identified the remains of morid cod, which are a species typically found at subphotic depths or depths greater than 95 m (Longnecker *et al.,* 2006). These dietary analyses, that indicate individual seal foraging preferences and seals foraging at greater depths, are consistent with seal foraging ecology studies discussed below.

Recent studies using new advances in technology have demonstrated that Hawaiian monk seals forage in marine habitats anywhere from a meter to several hundred meters in depth. Time-depth recorders from several studies revealed a large portion of effort at depths between 50 and 300 m (164–984 ft), which coincides with the bank and slope habitats used by prey species often detailed in monk seals' diets (Parrish 2004; Parrish and Abernathy 2006). Foraging studies by Parrish describe these preferred foraging habitat as low-relief substrates such as sand and talus in areas of habitat uniformity at greater depths than previously considered for critical habitat (Parrish and Littnan, 2007; Parrish, 2008), where adult seals are able to move large, loose talus fragments found in the premium foraging habitat to reach the prey hiding underneath (Parrish *et al.,* 2000). Although these sites are often greater distances from haul-out sites, it appears that the less sheltered prey in the uniform habitat may make this area energetically preferable to the seals (Parrish *et al.,* 2000). Studies in the NWHI (Parrish *et al.,* 2002; Stewart, 2006) have also shown that adult monk seals may forage at 300–500 m (1,000–1,600 ft), sometimes visiting patches of deep corals (Parrish 2004; Parrish *et al.,* 2002). A summary of telemetry data from 37 male and female adults tagged throughout the NWHI revealed that 17 seals appeared to be specializing in subphotic foraging (Parrish 2004). This calculates out to 46% of the adults tracked, which Parrish (2004) extrapolated out to be about a fourth of the entire population. The use of these deeper habitats may reflect monk seals taking advantage of readily available prey in a habitat with decreased inter-specific competition (Parrish, 2008). The maximum depth at which seals have been documented to forage is around 500 m (1640 ft) (Parrish 2004); however, monk seals are almost certainly capable of exceeding depths of 550 m and the extent of foraging depth may still be unknown (Parrish 2004; Stewart *et al.* 2006).

Foraging studies with instrumented juvenile monk seals (1–3 years old) in the NWHI illustrated foraging behavior similar to that of adult monk seals. Feeding occurred both within shallow atoll lagoons 10–30 m (33–98 ft) and on deep reef slopes (50–100 m/160–325 ft), usually over sand rather than talus (Parrish *et al.,* 2005). Video footage of juvenile seal foraging showed seals moving along the bottom, flushing prey with a variety of techniques, including probing the bottom with their nose, using their mouth to squirt streams of water at the substrate, and flipping small rocks with their heads and shoulders (Parrish *et al.,* 2005). While juvenile seals are able to dive to depths similar to adults, the smaller seals likely do not yet have the size or experience to engage in the successful large talus-foraging behavior exhibited by adults (Parrish *et al.,* 2005). In addition to the preferred habitat, limited data also indicate that juvenile seals may occasionally forage at the deeper ranges used by adults (Parrish 2004).

Although much less information is available regarding monk seals foraging in the MHI, 11 juvenile and adult monk seals were tracked in 2005 using satellite-linked radio transmitters showing location and summaries of dive depths. This study indicated that seals usually remained in near shore waters within the 200 m (650 ft) isobath (Littnan *et al.,* 2006). Since that study, recent tracking of Hawaiian monk seals with cell phone tags in the MHI demonstrates some diving depths up to 489 m (1,555 ft) (NMFS, 2010g).

In general, the selection of foraging habitat by monk seals may be influenced by many factors, including environmental conditions that influence abundance and composition of prey assemblages; conditions that influence prey availability and capture success such as intra-specific and inter-specific competition; as well as individual circumstance including size and age class, preferred prey, and individually

favored foraging tactics. These variables all influence where and how Hawaiian monk seals utilize foraging habitat within the marine environment.

In summarizing monk seal habitat, features that support resting, reproduction, molting, predator avoidance, and foraging are essential for the conservation of this species. Therefore, Hawaiian monk seal critical habitat must include terrestrial and marine areas. Terrestrial areas include a sanctuary for hauling out for resting, molting, pupping, nursing, and avoiding predators. Terrestrial habitat consists of near shore or emergent surfaces where monk seals can haul out. Those areas preferred for pupping consist of a subset of haul-out habitat and are usually on sandy beaches adjacent to shallow marine areas. These shallow marine areas provide protection for pups while they become accustomed to unaccompanied life in the marine environment and begin learning to forage on their own. The marine habitat includes areas used for thermoregulating, resting, interacting, mating, and foraging. Foraging habitat for Hawaiian monk seals has been demonstrated to be at depths as great as 500 m in the NWHI. Recent declines in the Hawaiian monk seal population point to food limitations in the NWHI, especially for juvenile monk seals, making marine foraging areas particularly critical components of monk seal habitat.

**Critical Habitat**

Section 4(b)(2) of the ESA requires us to designate critical habitat for threatened and endangered species "on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat." This section also grants the Secretary of Commerce (Secretary) discretion to exclude any area from critical habitat if he determines "the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat." However, the Secretary may not exclude areas that "will result in the extinction of the species."

The ESA defines critical habitat under section 3(5)(A) as: "(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination by the Secretary that such areas are essential for the conservation of the species."

Once critical habitat is designated, section 7 of the ESA requires Federal agencies to insure they do not fund, authorize, or carry out any actions that will destroy or adversely modify that habitat. This requirement is additional to the section 7 requirement that Federal agencies insure their actions do not jeopardize the continued existence of listed species.

**Methods and Criteria Used To Identify Critical Habitat**

In the following sections, we describe the relevant definitions and requirements in the ESA, our implementing regulations, and the key information and criteria used to prepare this proposed critical habitat revision. In accordance with section 4(b)(2) of the ESA and our implementing regulations (50 CFR Part 424), this proposed rule is based on the best scientific information available.

To assist with the revision of Hawaiian monk seal critical habitat, we convened a critical habitat review team (CHRT) consisting of seven biologists from NMFS PIFSC and the Pacific Islands Regional Office (PIRO). The CHRT members had experience and expertise in Hawaiian monk seal biology, distribution and abundance, and management. The CHRT used the best available scientific data and their best professional judgment to: (1) Identify the physical and biological features essential to the conservation of the species that may require special management considerations or protection; (2) identify specific areas within the occupied area containing those essential physical and biological features; (3) evaluate the conservation value of each specific area; and (4) identify activities that may affect any designated critical habitat. The evaluations and conclusions are described in detail in the following sections. We concur with these conclusions.

*Physical or Biological Features Essential for Conservation*

Joint NMFS–USFWS regulations (50 CFR 424.12(b)) state that in determining what areas are critical habitat, the agencies "shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protections." Features to consider may include, but are not limited to: "(1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species." The regulations require the agencies to "focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the critical habitat description. Primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types." For the purposes of this proposed rule, the essential features are the same as primary constituent elements.

In the 12-month finding (74 FR 27988; June 12, 2009), we identified five preliminary essential features in order to identify to the public areas that may be under consideration for the critical habitat. For this proposed rule, we used the best available scientific information to modify and supplement the essential features announced in the 12-month finding to best describe those elements or areas essential for the conservation of the Hawaiian monk seal. The following six essential features were identified.

(1) Areas With Characteristics Preferred by Monk Seals for Pupping and Nursing

Hawaiian monk seals have been observed to give birth and nurse in a variety of terrestrial coastal habitats; however, certain beaches may be preferred for pupping at the various atolls and islands within the range. Preferred pupping areas generally include sandy, protected beaches located adjacent to shallow, sheltered aquatic areas (Westlake and Gilmartin, 1990). Terrestrial pupping habitat may include various substrates such as sand, shallow tide-pools, coral rubble, or rocky substrates, as long as these substrates provide accessibility for seals for hauling out. Characteristics of preferred sites may also incorporate areas with low lying vegetation utilized by the pair for shade or cover (Antonelis *et al.,* 2006). Preferred coastal areas may attract multiple mothers to the same area year after year for birthing (Antonelis *et al.,* 2006); however, due to

the solitary nature of the species, some mothers may prefer to return to a lesser used location year after year. As discussed in the natural history of the species, female Hawaiian monk seals nurse their pups for approximately 6 weeks, then abruptly abandon the pup (Johanos *et al.,* 1994). This dramatic weaning leaves the pup independent, subsisting on fat stores until it learns to successfully forage on its own (NMFS, 2007a). The preferred habitat for pupping and nursing provides area necessary for normal behavior, growth, and survival through the time period when pups are dependent on the mothers for sustenance and protection. These areas also provide a familiar sanctuary for the weaned pup during its transition to independence.

(2) Shallow, Sheltered Aquatic Areas Adjacent to Coastal Locations Preferred by Monk Seals for Pupping and Nursing

Preferred pupping and nursing sites are often adjacent to shallow, sheltered aquatic areas (Westlake and Gilmartin, 1990). These sheltered marine areas provide protection for the mom and pup pair from predators and extreme weather events, as well as habitat for thermoregulatory cooling and swimming (Westlake and Gilmartin, 1990; NMFS, 2007a). Upon weaning, the newly independent pup will utilize the sheltered marine area to acclimate to life on its own, utilizing the habitat for swimming, exploring, socializing, thermoregulatory cooling, and the first attempts at foraging. Characteristics of the sheltered aquatic sites may include reefs, tide pools, gently sloping beaches, and shelves or coves that provide refuge from storm surges and predators. Marine habitat adjacent to preferred pupping and nursing areas provides area necessary for the normal behavior, growth, and survival during early juvenile development for the Hawaiian monk seal.

(3) Marine Areas From 0 to 500 m in Depth Preferred by Juvenile and Adult Monk Seals for Foraging

Food limitation is identified in the recovery plan as a critical threat to the Hawaiian monk seal; therefore, foraging grounds within the marine environment are an essential component in the recovery and conservation of the species. As identified in the habitat section of this report, Hawaiian monk seals forage in marine habitat anywhere from 0 to 500 m. This habitat includes barrier reefs of atolls, leeward slopes of reefs and islands, sites along the Hawaiian Islands Archipelago's submarine ridge, nearby seamounts, and submerged reefs and banks (Stewart, 2006). Preferred foraging habitat of adult monk seals is characterized by sand terraces and talus slopes that may range in depths of 50–100 m (160–325 ft) deep around their home atoll or island (Parrish and Littnan, 2007). These habitats provide substrate and materials for preferred benthic and cryptic prey species to hide. While the slopes are characterized as preferred feeding areas, recent diving, camera, and fatty acid analysis studies demonstrate that seals are feeding at depths greater than previously believed (300 m–500 m) (Parrish *et al.,* 2002; Iverson, 2006; Stewart, 2006). The use of these deeper habitats may reflect monk seals taking advantage of readily available prey in a habitat with decreased inter-specific competition (Parrish, 2008). Habitat at these greater depths may be comprised of deep water coral beds or the barren habitats prey species move between (Parrish *et al.,* 2002). Fatty acid analysis studies have demonstrated substantial variation in diet among individuals, demographic groups (between juveniles and adults/sub adults), and locations (Iverson, 2006). Thus, individual monk seal foraging preferences and capabilities play a role in selection of foraging habitat. The steady decline of the species (attributed mainly to food limitation) coupled with individual foraging tactics and prey preferences, reveals a need for protection that incorporates the features found in these foraging areas for this species.

(4) Areas With Low Levels of Anthropogenic Disturbance

Hawaiian monk seals utilize terrestrial habitat to haul out for resting, pupping and nursing, molting, and as a refuge from predators (NMFS, 2007a). The high energetic demands of life in the marine environment make resting behavior essential to the fitness of individual animals and the overall population. Human interactions with monk seals have the potential to cause disturbance and subsequent abandonment of a favored haul-out site or pupping area for less suitable locations. New locations may lack refuge characteristics, leaving the seals more vulnerable to predation or other environmental threats. Generally, Hawaiian monk seals seek areas that are undisturbed by large numbers of humans or human induced interactions (such as interactions with dogs or vehicles). Hawaiian monk seal intolerance of human disturbance is best documented in the NWHI following human settlement on specific islands throughout the various atolls (NMFS, 2007a). Kenyon (1972) documented changes in seal haul-out patterns at the human settled islands at Midway Islands, French Frigate Shoals, and Kure Atoll. Changes observed included seals avoiding human inhabited islands during day time hours and seals hauling out on the islands or islets less frequented by humans (Kenyon, 1972). At Kure Atoll the population experienced depressed rates of reproduction and decreased juvenile survival during this period of human settlement. Kenyon (1972) related the poor juvenile survival to female adults either selecting inferior pupping habitat prior to birth or prematurely abandoning or weaning young, as a response to human disturbance. The preference for less disturbed areas is also evident in monk seal selection of many of the favored haul-out sites in the MHI, which consequently are located in the less populated areas (Baker and Johanos, 2004).

(5) Marine Areas With Adequate Prey Quantity and Quality

Food limitation is identified in the recovery plan as a critical threat to the Hawaiian monk seal; therefore, prey quantity and quality within the marine foraging habitat is an essential component in the recovery and conservation of the species. Monk seals are considered foraging generalists, feeding on a wide variety of prey species. Goodman and Lowe (1998) identified inshore, benthic, and offshore teleosts as the most represented prey items in monk seal scat, followed by cephalopods and crustaceans. From the 940 scats sampled, the study was able to identify 31 families of teleosts and 13 families of cephalopods (Goodman and Lowe, 1998). Additionally, fatty acid analysis of the monk seal diet has identified a broad number of prey species consumed by the Hawaiian monk seal (Iverson, 2006). While the broad number of prey species makes identifying an individual prey species for specific protections difficult, the foraging habits of seals help to identify areas and habitat types that are regularly utilized, including the sand terraces, talus slopes, submerged reefs and banks, nearby seamounts, barrier reefs, slopes of reefs and islands, and deep coral beds. Within these habitats, conditions, such as water quality, substrate composition, and available habitat, should support growth and recruitment of prey species to the extent that monk seal populations are supported. Current evidence from shrinking seal subpopulations in the NWHI indicates that prey quantity and quality are essential to recovery, but further research is necessary to identify direct correlations to specific threats to the

prey species as well as to identify appropriate management actions.

(6) Significant Areas Used by Monk Seals for Hauling Out, Resting, or Molting

Hawaiian monk seals utilize terrestrial habitat to haul out for resting, pupping and nursing, molting, and as a refuge from predators (NMFS, 2007a). Energetic requirements of life in the marine environment make resting behavior important, and, consequently, terrestrial haul-out areas are an essential component for conservation. These haul-out sites are generally characterized by sandy beaches, sand spits, or low shelving reef rocks accessible to seals, but many substrates may be used including emergent reef (Antonelis *et al.,* 2006). Favored sites may also reflect areas remote in nature or with low levels of human disturbance. Although Hawaiian monk seals are considered to be a solitary species (in comparison to other gregarious pinnipeds, such as sea lions), they may still haul out in small numbers (Antonelis *et al.,* 2006) and are likely to frequent general areas utilized by other seals due to the preferences for accessible and remote habitat.

**Geographical Area Occupied and Specific Areas**

One of the first steps in the critical habitat revision process was to define the geographical area occupied by the species at the time of listing and to identify specific areas within this geographically occupied area that contain at least one of the essential features that may require special management considerations or protection. As discussed in the Range section above, the range of the Hawaiian monk seal was defined in the 12-month finding on June 12, 2009 (74 FR 27988; June 12, 2009), as throughout the Hawaiian Archipelago and on Johnston Atoll. Using the identified range, we identified "specific areas" within the geographical area occupied by the species that may be eligible for critical habitat designation under the ESA. For an occupied area to meet the criteria of critical habitat, it must contain specific areas with one or more of the essential features that may require special management or protection. We identified areas that met the criteria of critical habitat within the range of the species, including areas in the NWHI and the MHI. Johnston Atoll was considered for potential critical habitat, but we determined that the lack of recent seal use, the remote nature of the atoll from the Hawaiian Archipelago, and the hazardous conditions associated with past human use (including contamination, erosion, and debris (communication with USFWS staff)) rendered the features in this area inadequate for seal conservation. Each specific area was selected to reflect current seal use as well as anticipated habitat needs for recovery for the species. These specific areas are identified across the range, but areas have been grouped according to the NWHI and MHI management units to express similarities in population status, essential features present, and the activities that may affect the essential features such that special management considerations or protections are needed. The draft Biological Report (NMFS, 2010a; available via our Web site at *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html,* via the Federal eRulemaking Web site at *http://www.regulations.gov,* or upon request (see **ADDRESSES**)) describes in detail the methods used to assess the specific areas and provides the biological information supporting the assessment. The following paragraphs provide a brief description of the essential features in each area and additional detail regarding the methods for delineating the specific areas.

*Specific Areas in the NWHI*

While identifying specific areas in the NWHI, we first considered areas incorporated in the current (1988) designation of critical habitat and agreed that the identified areas in the NWHI continue to meet the definition of critical habitat under the ESA. Although omitted from the current designation, we also identified that Sand Island at Midway Islands provides essential features, including pupping and nursing areas and haul-out areas for Hawaiian monk seals. The human occupation of this island presents a need for special management and protections; thus, Sand Island meets the criteria for critical habitat. In considering Sand Island for the proposed designation, we recognized that the Midway Harbor located on Sand Island did not incorporate the essential features identified and that this area should not be included in the designation. We determined that for all specific areas in the NWHI, unless otherwise noted, all beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters and ocean waters are included out to the seaward boundary of the 500-m depth contour.

*Specific Area 1:* Kure Atoll's center point is defined at 28°25′11.00″ N/178°19′45.00″ W. Located at the northwestern end of the archipelago, the coral atoll is comprised of the major island, Green Island, and a few small sand spits. Kure is one of the 6 major breeding subpopulations described for the NWHI, and population declines were described for this area in 2009 (Center, 2009). All six essential features are present within the specific area.

*Specific Area 2:* Midway Islands' center point is defined at 28°14′12.00″ N/177 2206.00″ W. Located at approximately 2,100 km northwest of Honolulu, the grouping consists of three islands, Sand, Eastern, and Spit, located within the circular-shaped atoll. Today Sand Island supports a full time refuge staff, including residents that support and maintain a runway, and a visitor program. Considered one of the 6 major breeding subpopulations, the monk seal population in the Midway Islands was reported as declining in 2009 (Center, 2009). The specific area incorporates 88 $mi^2$ (227.9 $km^2$) of terrestrial and marine habitat, and all six essential features are present within it. Midway Harbor does not meet the definition of critical habitat. The boundaries of Midway Harbor were delineated to incorporate the inner harbor and hardened shorelines of the harbor. The polygon that bounds Midway Harbor includes the area bounded by the point at the seaward edge of the northern breakwater at the harbor entrance (28°12′44.31″ N/177°21′35.64″ W) then north along the breakwater to where the breakwater meets the coastline at 28°12′54.06″ N/177°21′38.69″ W then west to 28°12′56.63″ N/177°22′18.42″ W then south to 28°12′30.88″ N/177°22′23.89″ W then east to 28°12′32.68″ N/177°21′44.63″ W then north to the seaward edge of the southern breakwater at the harbor entrance (28°12′39.99″ N/177°21′38.04″ W) and a line back to meet the seaward edge of the northern breakwater at Midway Harbor's entrance.

*Specific Area 3:* Pearl and Hermes Reef center point is defined at 27°50′37.000″ N/175°50′32.00″ W. The first land area southeast of Midway, this coral atoll consists of numerous islets, seven of which are above sea level. The total land area in the Atoll is approximately 80 acres (32.4 hectares), but the surrounding reef area is extensive. The specific area was estimated to be 242 $mi^2$ (626.8 $km^2$). One of the 6 major breeding subpopulations, Pearl and Hermes Reef's monk seal population has been declining in recent years (Center, 2009); however, all six essential features are present within the specific area.

*Specific Area 4:* Lisianski Island center point is defined at 26°03′49.00″ N/173°58′00.00″ W. The single island is

located at about 1,667 km northwest of Honolulu, and is a low sandy island measuring approximately 1.8 km long and 1.0 km wide (NMFS, 1983). Though the island is small, a large reef area called Neva Shoals is located to the southeast. One of the 6 major breeding subpopulations, Lisianski's population has been declining in recent years (Center, 2009). However, the island and surrounding marine waters continue to support Hawaiian monk seals by providing all six essential features. The specific area was estimated to be 558 mi² (626.8 km²).

*Specific Area 5:* Laysan Island center point is defined at 25°46′11.00″ N/ 171°43′57.00″ W. The second largest land area in the NWHI, the coral-sand island encloses a hyper-saline lake in the middle of the island. The island is about 1.5 miles long (2.4 km) and 1 mile (1.6 km) wide and is partially surrounded by a fringing reef. The island lies approximately 213 km east of Lisianski Island and supports a small field camp. The Laysan monk seal population is the second largest of the 6 major breeding subpopulations, and the 2009 report concluded that the population is still in decline (Center, 2009). The specific area including and surrounding Laysan Island was estimated to be 294 mi² (761 km2) and all six essential features are present in this area.

*Specific Area 6:* Maro Reef center point is defined at 25°25′27.00″ N/ 170°35′19.00″ W. Maro Reef is the largest coral reef in the NWHI, located on top of a seamount. The reef is a complex maze of linear reefs that radiate out from the center and provide foraging habitat for the Hawaiian monk seal. Additionally, this area provides relatively undisturbed habitat with prey species present. This specific area incorporates approximately 960 mi² (2,486 km²) of marine habitat.

*Specific Area 7:* Gardner Pinnacles center point is defined at 25°0′00.00″ N/ 167°59′55.00″ W. Gardener Pinnacles consists of two pinnacles of volcanic rock between Maro Reef and French Frigate Shoals. Underwater shelves surround the pinnacles, and land and the marine habitat extending within this specific area was estimated to be approximately 1,489 mi² (3,857 km²). Home to a wide variety of prey species, Gardner Pinnacles provides relatively undisturbed marine foraging habitat and haul-out area for the Hawaiian monk seal (NMFS, 1983).

*Specific Area 8:* French Frigate Shoals center point is defined at 23°45′31.00″ N/166°14′37.00″ W. This coral atoll is open to the west and partially enclosed by a crescent-shaped reef to the east. It lies about midpoint in the Hawaiian Archipelago and consists of several small sandy islets, the largest of which is Tern Island, where a year round field staff is present. French Frigate Shoals has provided habitat for a number of years to the largest breeding subpopulation of Hawaiian monk seals; however, this subpopulation has also experienced a tremendous decline in population attributed to poor juvenile survival (Antonelis *et al.,* 2006). This downward trend is expected to continue due to poor recruitment into the breeding class (Antonelis *et al.,* 2006). This specific area was determined to be approximately 469 mi² (1,215 km²) and all six essential features are present within the specific area.

*Specific Area 9:* Necker Island center point is defined at 23°34′36.00″ N/ 164°42′01.00″ W. The island also known as Mokumanamana is a small basalt island that is about 46 acres (19 hectares) in size. Habitat utilized by Hawaiian monk seals includes accessible rocky benches for hauling out, and pupping has been recorded at this site. In contrast to other areas in the NWHI, counts of Hawaiian monk seals at Necker have indicated an increasing trend in recent years (Center, 2009). Although the island is small in size, marine habitat surrounding the island is large, and the specific area was estimated to be approximately 900 mi² (2,331 km²) including land and marine habitat. All six essential features are present within the specific area. This island is uninhabited, but research crews do occasionally visit.

*Specific Area 10:* Nihoa Island center point is defined at 23°03′23.00″ N/ 161°55′18.99″ W. Nihoa is the easternmost island described in the NWHI and consists of a remnant volcanic peak with large foot cliffs, basalt rock surface, and a single beach. Hawaiian monk seals utilize the single beach and some accessible rock ledge areas for hauling out. The single beach is also used by multiple mothers for pupping and nursing. Similar to Necker, beach counts at Nihoa have indicated an increasing trend in recent years (Center, 2009). All six essential features are present within the specific area, and the specific area is estimated to be approximately 547 mi² (1,417 km²) incorporating all land and marine habitat.

*Specific Areas in the MHI*

In considering specific areas for the MHI, we recognized that data (including birth records and sighting information) indicate that each of the islands located within the MHI chain offers at least one of the essential features that fit the criteria for Hawaiian monk seal critical habitat. Additionally, human activities associated with human use and development of coastal habitats and marine waters surrounding these islands may require special management or protections. The recovery needs of the species become especially important when considering the current status of the Hawaiian monk seal in the NWHI. The poor juvenile recruitment in the NWHI over the past decade will contribute to continued decline in the breeding subpopulations for some time. Thus, MHI habitat, where seals are experiencing favorable conditions, has become vital to the survival of the species as a whole.

In considering the MHI habitat, we recognized that designating critical habitat in the MHI based on current seals' beach preference would fail to take into account enough area to support the growing population or, more importantly, a recovered population. The recovered population identified by the *Recovery Plan for the Hawaiian Monk Seal* (NMFS, 2007a) set the population goal in the MHI at 500 individuals. This number is well above the estimated 150 individuals in the MHI. We considered that Hawaiian monk seals are unlike pinniped species that congregate in large numbers at specific or discrete sites (*e.g.,* rookeries or colonies). The species is considered solitary and wide ranging, which results in individuals spreading out and utilizing a large range of areas in the terrestrial and marine environment. Monk seal habitat preferences vary greatly between individuals, and additionally may change throughout the life span of the animal. With this consideration in mind, the number of seals currently utilizing the MHI is small; however, this small group occupies the entire MHI chain, and both observation and tracking data demonstrate that seals utilize terrestrial habitat around the perimeter of all of the islands.

While some seals may be well recognized at specific haul-out sites, these same seals are using multiple haul-out sites around an island or multiple islands. Seals may move around and between islands over the course of a day, several days, weeks, or several months. Basing our critical habitat designation on only currently recognized or favored Hawaiian monk seal haul-out sites may only reflect individual monk seal preference, rather than accurately characterize essential features for survival and recovery of the species as a whole. In conjunction with this concern is the fact that data gathered in the MHI are currently

dependent mostly on voluntary sighting information, and this may not accurately depict monk seal habitat use and preferences. For example, seals arriving in an area such as Poipu Beach, Kauai, which is frequented by human activity, are likely to be reported; however, seals utilizing more remote areas such as Laau Point, Molokai, having similar habitat characteristics, are likely to go unreported. We believe that a more expansive designation of critical habitat that includes areas where the species is likely to be found meets the needs of this wide ranging species and the conservation goals of the ESA. In addition to these factors, as a coastally dependent species, the Hawaiian monk seal will be impacted by sea level rise throughout its range. Habitat loss at low lying atolls in the NWHI will continue, and coastal habitats in the MHI may be impacted as well. This type of threat is not easily managed, and only a proactive approach to habitat protection will temper future losses and provide area for the recovery of the species.

In identifying the terrestrial boundaries for the MHI, we recognized that terrestrial habitat in the MHI is not consistent with the small islands of the NWHI, in that the MHI represent much larger land masses, many of which are not accessible to the Hawaiian monk seal. Not all terrestrial habitat in the MHI is equal in seal accessibility and use, and portions of the MHI coastal habitat can be considered hardened shorelines or developed areas that do not have the essential features and would not support Hawaiian monk seal conservation. These areas identified include boat harbors, cliffs, active lava, and large bays with extensive runoff. These locations are identified under each specific area as regions that are not proposed to be designated as critical habitat. Other stretches of hardened shoreline do exist in the MHI; these stretches are often positioned between accessible haul-out locations, and identification of every area would cause a piecemeal delineation. Such areas have been included in the designation area with the understanding that terrestrial areas with manmade structures (*e.g.,* docks, fishponds, seawalls, piers, roads, pipelines), and the land on which they are located, in existence prior to the effective date of the rule are not essential to the conservation of the species and do not meet the definition of critical habitat.

To determine the marine boundaries in the MHI, we reviewed foraging information for the Hawaiian monk seal. Current foraging information from the MHI indicates that foraging monk seals have a smaller range than seals foraging in the NWHI, but recent tracking data indicate that some seals are utilizing habitat in deeper areas (NMFS, 2010g). As discussed earlier, in the NWHI vs. MHI section, the MHI may provide less inter-specific as well as intra-specific competition for foraging monk seals. As populations increase in the MHI and intra-specific competition increases, seals will likely be forced to greater foraging depths and ranges to meet foraging needs. Thus, foraging patterns will begin to mimic foraging patterns of seals tracked in the NWHI. With this consideration in mind, we identified that foraging habitat for each specific area should be consistent with that in the NWHI to reflect the growing needs of the population and what is known regarding the species as a whole.

Specific areas in the MHI, identified by number below, include terrestrial habitat 5 m inland from the shoreline, described as upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth or the upper limit of debris, through the shoreline into the marine environment out to the 500-m depth contour around: Kaula Island, Niihau, Kauai, Oahu, Maui Nui (including Kahoolawe, Lanai, Maui, and Molokai), and Hawaii (except those portions of the areas that have been identified as not included in the designation).

*Specific Area 11:* Kaula Island is located 23 miles (37 km) west-southwest of Kawaihoa Point on Niihau. The island is the second largest offshore islet found in the MHI, after Lehua, and is the eroded result of a tuff crater. The crater wall creates a small bay along the inside curve, and a rock terrace or bench sits along this inner edge, ranging in width from 3.1 m to 24 m and providing haul-out habitat for Hawaiian monk seals. Limited access surveys from the island have demonstrated that multiple seals use the bench area for hauling out. Surveys have recorded as many as 15 individuals in 2006 and 6 individuals in 2009. Near the outer side of the crater along the northwest side of the island is a large sea cave where Hawaiian monk seals have been sighted. The islet is surrounded by 39 $mi^2$ (101 $km^2$) of marine habitat that falls within the 500-m depth contour and is located on a shoal that supports a large variety of marine life. The U.S. Navy has jurisdictional control over the island and the 3 nautical mile (nm) (5.6 km) danger zone surrounding it, and uses the island for target practice with inert ordnances. The State of Hawaii identifies the as a State Seabird Sanctuary. No seal births have been recorded from the limited access surveys that have been done on the island. Kaula Island provides preferred haul-out areas, marine foraging habitat with available prey species, and relatively undisturbed areas.

*Specific Area 12:* Niihau Island is located 17 miles (27 km) off the southwest coast of Kauai. Access to Niihau is limited to Niihau residents, the U.S. Navy, and invited guests. This specific area also includes Lehua Island, a tuff crater located a half mile (0.8 km) north of Niihau that provides shelves and benches for Hawaiian monk seals to haul out. The general coastline of Niihau is approximately 90 miles (145 km) and the specific area incorporates 200 $mi^2$ (518 $km^2$) of marine habitat. Lehua is administered by the U.S. Coast Guard, and activities are subject to Hawaii Department of Land and Natural Resources regulations because it is a Hawaii State Seabird Sanctuary. Hawaiian monk seals utilize the coast of Niihau for hauling out, and a total of 24 births have been documented on the island despite limited surveys due to restricted access. Single day aerial surveys of the island have produced the highest count of seals recorded in the MHI, with 47 individuals, and residents have acknowledged that seals were regularly seen on the island since the 1970s (Baker and Johanos, 2004). The less disturbed coastlines and marine areas surrounding the island of Niihau provide all of the essential features for the Hawaiian monk seal critical habitat.

*Specific Area 13:* Kauai is the oldest of the islands in the MHI. The specific area incorporates 326 $mi^2$ (844 $km^2$) of marine habitat, and the island has approximately 90 miles (145 km) of coastline. Kauai's beaches and coastline are utilized by Hawaiian monk seals for hauling out and for pupping and nursing. Although few births were recorded on Kauai prior to 1999, since that time 40 births have been recorded on the island. All six essential features are present within the specific area.

Areas within this specific area that do not meet the definition of critical habitat are defined as the following locations and are delineated by the identified boundaries: Hanalei Bay delineated by all terrestrial coastline areas located between the Makahoa Point (22°12′49.48″ N/159°31′01.82″ W) east to 22°12′56.10″ N/159°29′52.82″ W and all waters located inshore of a line drawn between those two points; Kikiaola Harbor delineated by all terrestrial coastline areas from 21°57′34.92″ N/159°41′36.36″ W east to 21°57′28.89″ N/159°41′34.91″ W and all

harbor waters located inshore of the line drawn between the seaward edge of western breakwater at the harbor's entrance (21°57′28.58″ N/159°41′36.57″ W) and the seaward edge of eastern breakwater at the harbor's entrance (21°57′27.19″ N/159°41′41.34″ W); Kilauea Point Cliff area delineated by all terrestrial coastlines located between 22°13′50.27″ N/159°24′07.42″ W east around to 22°13′50.97″ N/159°24′05.68″ W; Na Pali coast cliffs delineated by the mouth of the Hanakapiai stream (22°12′30.35″ N/159°35′53.00″ W) south west to the mouth of the Kalalau Stream (22°10′43.33″ N/159°39′03.42″ W); Nawiliwili Harbor delineated as all terrestrial coastlines between Kukii Point Light (21°57′23.80″ N/159°20′52.70″ W) south to where the southern breakwater meets the shoreline (21°56′54.65″ N/159°21′03.15″ W) and all waters inshore of a line drawn from Nawiliwili Harbor Breakwater Light (21°57′11.68″ N/159°20′54.94″ W) east to Kukii Point Light (21°57′23.80″ N/159°20′52.70″ W) (*i.e.,* the harbor's USCG defined COLREG line); Hanapepe Bay and Port Allen delineated by all terrestrial coastlines between the Hanapepe Light (21°53′34.55″ N/159°36′15.55″ W) east to where the Hanapepe breakwater meets the shoreline to the east (21°53′54.97″ N/159°35′14.50″ W) and all waters inshore of the line drawn from Hanapepe Light (21°53′34.55″ N/159°36′15.55″ W) east to Hanapepe Bay Breakwater (21°53′49.10″ N/159°35′27.25″ W) (*i.e.,* the harbor's USCG defined COLREG line); Waikaea Canal delineated by all terrestrial coastline, structures and waters inshore of the line drawn from the seaward edge of the southern breakwater at the mouth of the canal (22°04′14.7″ N/159°18′58.98″ W) north to the seaward edge of the northern breakwater at the mouth of the canal (22°04′16.41″ N/159°18′58.00″ W); Wailua Canal delineated as all coastline and waters located inshore of the bridge crossing the Wailua River or a line drawn between 22°02′41.13″ N/159°20′11.95″ W south to 22°02′44.27″ N/159°20′10.93″ W.

*Specific Area 14:* Oahu is the third largest island in the MHI chain. The specific area incorporates 697 mi² (1,805 km²) of marine habitat and the island has approximately 111 miles (179 km) of general coastline. Oahu's beaches, coastline and offshore islets are utilized by Hawaiian monk seals for hauling out and for pupping and nursing. Since 1991, 18 births have been recorded for the area. All six essential features are present within the specific area.

Areas within this specific area that do not meet the definition of critical habitat are defined as the following locations and are delineated by the identified boundaries: Pearl Harbor to Kapua Channel delineated by all terrestrial coastlines between Keahi point (21°18′57.95″ N/157°58′42.82″ W) east to eastern edge of the Kapua channel (21°15′28.77″ N/157°49′07.51″ W) and all waters out to depth of the 3 fathoms (5.4864 m) between the line drawn from Keahi point (21°18′57.95″ N/157°58′42.82″ W) to meet the 3 fathom (5.4864 m) contour following the 3-fathom (5.4864 m) contour east to a line drawn from the eastern edge of the Kapua channel (21°15′28.77″ N/157°49′07.51″ W) out to meet the 3 fathom (5.5 m) contour; Haleiwa Harbor delineated by all terrestrial coastlines between where the eastern breakwater meets the coastline (21°35′47.44″ N/158°06′16.15″ W) west to where the western breakwater meets the coastline (21°35′42.59 N/158°06′25.19″ W) and all waters in the harbor inshore of the line drawn between breakwater Light 6 (21°35′47.63″ N/158°06′22.42″ W) and the seaward edged of the eastern breakwater (21°35′47.44″ N/158°06′16.15″ W); Maunalua Bay and Hawaii Kai Harbor delineated as all coastline and waters located inshore of the line drawn between 21°16′53.22″ N/157°43′21.77″ W east to the point 21°15′49.13″ N/157°42′41.45″ W; Kalaeloa Barbers Point delineated as all coastline and waters located inshore of the line drawn between the harbor's entrance channel Light 6 (21°19′19.07″ N/158°07′16.08″ W) north to harbor entrance channel Light 7 (21°19′23.81″ N/158°07′19.82″ W); Kaneohe Bay delineated as all coastlines and waters located inshore of the line drawn from Pyramid Rock Light (21°27′44.12″ N/157°45′48.69″ W) through the center of Mokolii Island to the shoreline (21°30′59.27″ N/157° 50′10.01″ W) (*i.e.,* the bay's USCG defined COLREG line); Waianae Small Boat harbor delineated by all coastlines between northern point where the breakwater meets the coastline 21°27′4.15″ N/158°11′54.59″ W south through to the range front light (21°26′55.57″ N/158°11′46.70″ W) and all waters inside the harbor located inshore of the line drawn between the range front light (21°26′55.57″ N/158°11′46.70″ W) west to the breakwater Light 1 described by the USCG at (21°26′50.68″ N/158°11′48.90″ W).

*Specific Area 15:* Maui Nui includes the islands Molokai, Lanai, Kahoolawe, and Maui and the surrounding marine waters. This specific area incorporates 2,510 mi² (6,500 km²) of marine habitat, 119 mi (192 km) of general coastline on Maui, 88 miles (142 km) of general coastline on Molokai, 47 miles (76 km) of coastline on Lanai, and 29 miles (47 km) of general coastline on Kahoolawe. Since 1995, 53 births have been recorded on the island of Molokai, 7 on the island of Kahoolawe, and 6 on the island of Maui. All six essential features are present within the specific area.

Areas within this specific area that do not meet the definition of critical habitat are defined as the following locations and are delineated by the identified boundaries: Hana wharf and ramp, Maui is delineated by all terrestrial coastlines from 20°45′18.53″ N/155°58′56.32″ W east to 20°45′19.93″ N/155°58′54.12″ W; Kahului Harbor is delineated by all terrestrial coastline between where the hardened shoreline meets the beach to the west of the harbor (20°53′53.05″ N/156°28′47.87″ W) east to where the hardened shoreline meets the beach to the east of the harbor (20°53′49.07″ N/156°27′38.84″ W) and all waters located inshore of the line drawn between the west breakwater Light 4 (20°54′01.16″ N/156°28′26.82″ W) east to the east breakwater Light 3 (20°54′02.36″ N/156°28′17.43″ W) (*i.e.,* the harbor's USCG defined COLREG line); Kihei boat ramp, Maui is delineated by all terrestrial coastlines between 20°42′31.34″ N/156°26′46.95″ W south to 20°42′27.19″ N/156°26′46.13″ W and all waters in the harbor located inshore of the line drawn between 20°42′31.34″ N/156°26′46.95″ W west to the seaward edge of the northern point on the breakwater at the harbor entrance (20°42′30.29″ N/156°26′48.46″ W); Lahaina harbor, Maui is delineated by all terrestrial coastlines between 20°52′21.63″ N/156°40′44.05″ W south to 20°52′11.67″ N/156°40′38.53″ W and all waters in the harbor located inshore of the line drawn from 20°52′21.63″ N/156°40′44.05″ W to the seaward edge of the breakwater at the harbor entrance (20°52′18.18″ N/156°40′45.33″ W); Maalaea Harbor is delineated by all terrestrial coastlines between where the western hardened shoreline meets the coast (20°47′23.65″ N/156°30′49.85″ W) east to where the eastern hardened shoreline meets the coast (20°47′32.07″ N/156°30′34.24″ W) and all waters in the harbor located inshore of the line drawn from the seaward edge of the west breakwater at the harbor entrance (20°47′24.74″ N/156°30′39.18″ W) east to the seaward edge of the east breakwater at the harbor entrance (20°47′24.59″ N/156°30′36.41″ W); Mala wharf and ramp, Maui is delineated by all hardened structures and coastline between the point where the hardened

structures of the wharf meets the coastline on the south side of the wharf (20°53′05.20″ N/156°41′12.47″ W) north to the southern edge of the Kahoma stream (20°53′07.86″ N/156°41′10.78″ W); Nakalahale cliff region, Lanai is delineated by all coastline between 20°44′31.86″ N/156°52′46.92″ W east to 20°45′05.8458″ N/156°52′00.8214″ W; Kaholo cliff region, Lanai is delineated by all coastline between 20°46′40.33″ N/156°59′19.02″ W south to 20°44′17.52″ N/156°58′03.36″ W; Manele Harbor, Lanai is delineated by all terrestrial coastlines from where the Manele Harbor breakwater meets the coastline (20°44′29.34″ N/156°53′15.88″ W) north to 20°44′34.95″ N/156°53′15.45″ W and all waters located inshore of a line drawn between the seaward extension of the breakwater (20°44′30.38″ N/156°53′16.33″ W) north to 20°44′34.95″ N/156°53′15.45″ W; Kamalapau Harbor, Lanai is delineated by all terrestrial coastline between 20°47′29.37″ N/156°59′20.04″ W south to 20°47′07.94″ N/156°59′21.51″ W; Haleolono Harbor, Molokai is delineated by all hardened structures and coastline between 21°05′13.04″ N/157°15′03.68″ W east to 21°05′04.43″ N/157°14′54.82″ W and all waters located inshore of the line drawn between the seaward edge of the west breakwater 21°05′01.21″ N/157°14′58.95″ W east to the seaward edge of the east breakwater 21°05′04.43″ N/157°14′54.82″ W; Kaunakakai Pier, Molokai is delineated by all terrestrial coastline between 21°05′14.83″ N/157°01′30.42″ W east to 21°05′09.12″ N/157°01′23.05″ W; and Kalaupapa Harbor is delineated by all terrestrial coastline between 21°11′26.09″ N/156°59′04.76″ W south to 21°11′23.57″ N/156°59′04.12″ W.

*Specific Area 16:* Hawaii is the largest island in the MHI, with a general coastline of 265 miles (426 km), and the specific area incorporates approximately 1,015 $mi^2$ (2,629 $km^2$) of marine habitat. Since 2001, 9 births have been recorded on the island of Hawaii. All six essential features are present within the specified area.

Areas within this specific area that do not meet the definition of critical habitat are defined as the following locations and are delineated by the identified boundaries: Hilo harbor delineated by all water inshore of a line drawn from the seaward extremity of the Hilo Breakwater 265° true (as an extension of the seaward side of the breakwater) (19°44′34.53″ N/155°04′29.98″ W) west to the shoreline 0.2 nautical mile (0.4 km) north (19°44′28.74″ N/155°05′23.80″ W) of Alealea Point or the harbor's USCG defined COLREG line and delineated by all terrestrial coastlines between 0.2 nautical mile (0.4 km) north (19°44′28.74″ N/155°05′23.80″ W) of Alealea Point east to 19°43′55.88″ N/155° 03′01.68″ W; Honokohau harbor delineated by all terrestrial coastlines and waters inshore and inland of the line drawn between the Honokohau entrance channel Light 3 (19°40′11.52″ N/156°01′37.84″ W) and the Honokohau entrance channel Light 4 (19°40′09.41″ N/156°01.35.90″ W) Kailua-Kona Wharf delineated by all coastlines and waters located inshore of the line drawn between 19°38′17.09″ N/155°59′53.05″ W east to 19°38′17.69″ N/155°59′39.43″ W; Kawaihae Harbor all coastlines and hardened structures located between Kawaihae Light (20°02′29.12″ N/155°49′58.21″ W) south to 20°01′42.29″ N/155°49′25.20″ W and all waters located inshore of the line drawn between Kawaihae Light (20°02′29.12″ N/155°49′58.21″ W) and the seaward extremity of the Kawaihae breakwater Light 6 (20°02′14.21″ N/155°50′02.00″ W); Keauhou boat harbor all terrestrial coastlines between 19°33′39.63″ N/155°57′45.06″ W east to 19°33′42.89″ N/155°57′42.69″ W; Mahukona Harbor all coastlines and structures located between 20°10′59.62″ N/155°54′03.57″ W east to 20°11′02.21″ N/155°54′01.99″ W; and the active lava flow areas along the coastline.

**Unoccupied Areas**

Section 3(5)(A)(ii) of the ESA authorizes designation of "specific areas outside the geographical areas occupied by the species at the time it is listed" if those areas are determined to be essential to the conservation of the species. Joint NMFS and USFWS regulations (50 CFR 424.12(e)) emphasize that the agency shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. At the present time we have not identified additional specific areas outside the geographic area occupied by Hawaiian monk seals that may be essential for the conservation of the species.

**Special Management Considerations or Protections**

Joint NMFS and USFWS regulations at 50 CFR 424.02(j) define "special management considerations or protection" to mean "any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species."

Activities that may require special management or protection were identified by reviewing the threats identified in the Hawaiian Monk Seal Recovery Plan (NMFS, 2007a) as either impacting the seal or the essential features of the habitat. Threats identified as impacting the individual seal were considered jeopardy threats that are addressed with protections put in place with the listing of the species. Threats impacting the essential features of habitat were considered to be potential threats to critical habitat. In some cases, threats were considered both a threat to the species and to the habitat, and these threats were examined from a habitat perspective. Human activities with potential for generating or contributing to the habitat related threats were then identified in order to determine special management considerations or protections that may be necessary. Past PIRO ESA section 7 consultations were also reviewed to further identify activities that occur in the Hawaiian Islands that may impact the essential features. Additionally, threats recognized in the Petition (Center for Biological Diversity, 2008) were reviewed for possible associated activities that may impact the essential features. Human activities identified as having the potential to threaten the essential features such that special management considerations or protection may be necessary were then organized into categories for consideration during the 4(b)(2) analysis.

Major categories of activities that are related to habitat were defined as the following: (1) In water and coastal construction; (2) dredging and disposal of dredged material; (3) energy development (renewable energy projects); (4) activities that generate water pollution; (5) aquaculture; (6) fisheries; (7) oil spills and vessel groundings response activities; and (8) military activities. All of the identified activities have the potential to affect one or more of the essential features by altering the amount of the physical habitat available for Hawaiian monk seals, the quality of that area available (*e.g.,* increasing the level of anthropogenic disturbance), or the marine environment in such a way that the prey quantity or quality, is negatively impacted. This is not an exhaustive or complete list of potential effects, but rather a description of the primary concerns and potential effects that we are aware of at this time and that should be considered in the analysis of these activities under section 7 of the ESA. These activities are described briefly in Table 1 below. The draft Biological Report (NMFS, 2010a) and

draft Economic Analysis Report (ECONorthwest 2010) provide a more detailed description of the potential effects of each category of activities and threats on the essential features. For example, activities such as in-water and coastal construction, dredging and disposal of dredged materials, energy projects, aquaculture projects, and military activities may have adverse impacts on preferred pupping and nursing areas, marine areas associated with pupping and nursing areas, marine foraging areas, or significant haul-out areas by decreasing the amount of available space in these areas. Increased activities such as those mentioned, located in remote sites, also have the potential to impact the level of anthropogenic disturbance such that Hawaiian monk seals abandon preferred pupping and nursing areas and significant haul-out sites. In-water and coastal construction, dredging and disposal of dredged materials, energy projects, aquaculture projects, and activities that generate water pollution may result in impacts to water quality such that the quantity and/or quality of available prey species are impacted.

TABLE 1—INFORMATION ON ACTIVITIES THAT MAY AFFECT HAWAIIAN MONK SEAL HABITAT ESSENTIAL FEATURES, INCLUDING THE SPECIFIC AREAS IN WHICH THE ACTIVITY IS LOCATED, THE ESSENTIAL FEATURES THAT ACTIVITY COULD AFFECT AND THE NATURE OF THAT THREAT, AND THE POSSIBLE MODIFICATIONS TO THE ACTIVITY DUE TO THE HAWAIIAN MONK SEAL CRITICAL HABITAT REVISION

| Activity | Specific areas | Essential features and nature of the threat | Possible modifications to the activity |
|---|---|---|---|
| In water and coastal construction. | 2, 8, 13, 14, 15, 16 | *Preferred pupping and nursing areas, marine areas adjacent to preferred pupping and nursing areas, significant haul-out areas, and marine foraging areas*—development on or near these areas may reduce the amount or quality of the available habitat.<br>*Adequate quantity or quality of prey*—construction may impact water quality by release of contaminants or increased sedimentation, resulting in impacts to the quantity and quality of prey species.<br>*Low levels of anthropogenic disturbance*—development in remote or less disturbed areas may increase the potential for disturbance, making monk seals avoid or abandon preferred areas. | Restriction on the spatial and temporal extent of the project. Limitations on the size, and numbers of heavy equipment brought into the area. Increased monitoring efforts regarding seal behavior and response to disturbance. Increased education efforts for the public. Increased education efforts for project personnel.<br>Monitoring efforts to identify impacts to benthic community or prey species. Limitations on access to and from the area. Monitoring efforts regarding seal foraging behavior. |
| Dredging | 2, 13, 14, 15, 16 | *Preferred pupping and nursing areas, marine areas adjacent to preferred pupping and nursing areas, significant haul-out areas, and marine foraging areas*—dredging or disposing in or near these areas may reduce the amount or quality of the available habitat.<br>*Adequate quantity or quality of prey*—dredging or disposing may impact water quality by release of contaminants or increased sedimentation, resulting in impacts to the quantity and quality of prey species.<br>*Low levels of anthropogenic disturbance*—dredging or disposal in remote or less disturbed areas may increase the potential for disturbance, making monk seals avoid or abandon preferred areas. | Restriction on the spatial and temporal extent of the project. Limitations on the size, and numbers of heavy equipment brought into the area. Increased monitoring efforts regarding seal behavior and response to disturbance. Increased education efforts for project personnel. Monitoring efforts to identify impacts to benthic community or prey species. Limitations on access to and from the area. |
| Energy Development (renewable energy projects). | 13, 14, 15, 16 | *Preferred pupping and nursing areas, marine areas adjacent to preferred pupping and nursing areas, significant haul-out areas, and marine foraging areas*—development on or near these areas may reduce the amount or quality of the available habitat.<br>*Adequate quantity or quality of prey*—construction may impact water quality by release of contaminants or increased sedimentation, resulting in impacts to the quantity and quality of prey species.<br>*Low levels of anthropogenic disturbance*—development in remote or less disturbed areas may increase the potential for disturbance, making monk seals avoid or abandon preferred areas. | Restriction on the spatial and temporal extent of the project. Limitations on the size, and numbers of heavy equipment brought into the area. Increased monitoring efforts regarding seal behavior and response to disturbance. Increased education efforts for the public. Increased education efforts for project personnel. Monitoring efforts to identify impacts to benthic community or prey species. Limitations on access to and from the area. Monitoring efforts regarding seal foraging behavior. |
| Activities that generate water pollution. | 13, 14, 15, 16 | *Adequate quantity or quality of prey*—release of contaminants, pollutants, or increased sediment may result in degradation of water quality, causing declines in prey quantity and/or quality. | Restriction on the location or amount of discharge. Increased monitoring efforts to identify impacts to benthic community or prey species. Where Federal permits are necessary, ensure that discharge meets standards other than existing Federal standards and regulations. |

TABLE 1—INFORMATION ON ACTIVITIES THAT MAY AFFECT HAWAIIAN MONK SEAL HABITAT ESSENTIAL FEATURES, INCLUDING THE SPECIFIC AREAS IN WHICH THE ACTIVITY IS LOCATED, THE ESSENTIAL FEATURES THAT ACTIVITY COULD AFFECT AND THE NATURE OF THAT THREAT, AND THE POSSIBLE MODIFICATIONS TO THE ACTIVITY DUE TO THE HAWAIIAN MONK SEAL CRITICAL HABITAT REVISION—Continued

| Activity | Specific areas | Essential features and nature of the threat | Possible modifications to the activity |
|---|---|---|---|
| Aquaculture | 13, 14, 15, 16 | *Preferred pupping and nursing areas, marine areas adjacent to preferred pupping and nursing areas, significant haul-out areas, and marine foraging areas*—development of facilities on or near these areas may reduce the amount or quality of the available habitat.<br>*Adequate quantity or quality of prey*—construction and effluent release may impact water quality by release of contaminants or increased sedimentation, resulting in impacts to the quantity and quality of prey species.<br>*Low levels of anthropogenic disturbance*—development of facilities in remote or less disturbed areas may increase the potential for disturbance, making monk seals avoid or abandon preferred areas. | Restriction on the spatial and temporal extent of the project. Limitations on the size, and numbers of heavy equipment brought into the area. Increased monitoring efforts regarding seal behavior and response to disturbance. Increased education efforts for project personnel. Monitoring efforts to identify impacts to benthic community or prey species. Limitations on access to and from the area. Monitoring efforts regarding seal foraging behavior. Where Federal permits are necessary, ensure that discharge meets standards other than existing Federal standards and regulations. |
| Fisheries | 12, 13, 14, 15, 16 | *Adequate quantity or quality of prey*—overlap between prey species and commercial fisheries may impact the amount of available prey species. | Restriction on the spatial or temporal extent of fishing areas. Increased monitoring efforts to identify ecosystem impacts to prey species. |
| Oil spills and vessel groundings response activities. | Due to vessel traffic any specific area may be impacted, but more developed areas may be at higher risk: 12, 13, 14, 15, and 16. | *Preferred pupping and nursing areas, marine areas adjacent to preferred pupping and nursing areas, significant haul-out areas, and marine foraging areas*—oil spills or groundings on or near these areas may reduce the amount or quality of the available habitat.<br>*Adequate quantity or quality of prey*—oil spills or chemical releases from groundings may impact water quality, resulting in impacts to the quantity and quality of prey species. Additionally, removal of vessels may increase sedimentation, impacting water quality and prey species.<br>*Low levels of anthropogenic disturbance*—oil spills or vessel groundings in remote or less disturbed areas may increase the potential for disturbance, making monk seals avoid or abandon preferred areas. | Limitations on the size, and numbers of heavy equipment brought into the area. Increased monitoring efforts regarding seal behavior and response to disturbance. Increased education efforts for the public. Increased education efforts for project personnel. Monitoring efforts to identify impacts to benthic community or prey species. Limitations on access to and from the area. Monitoring efforts regarding seal foraging behavior. |
| Military activities | 10, 12, 13, 14, 15, 16. | *Preferred pupping and nursing areas, marine areas adjacent to preferred pupping and nursing areas, significant haul-out areas, and marine foraging areas*—military activities in or near these areas may reduce the amount or quality of the available habitat.<br>*Adequate quantity or quality of prey*—certain activities may impact the quantity and quality of prey species.<br>*Low levels of anthropogenic disturbance*—certain activities in remote or less disturbed areas may increase the potential for disturbance, making monk seals avoid or abandon preferred areas. | Restriction on the spatial and temporal extent of the project. Increased monitoring efforts regarding seal behavior and response to disturbance. Monitoring efforts to identify impacts to benthic community or prey species. Monitoring efforts regarding seal foraging behavior. |

We also considered impacts to essential features presented by the petitioner, specifically, the threat of global warming as described in the petition by the processes including sea level rise, warming ocean temperatures, and ocean acidification. A discussion of these threats may be found in the draft Biological Report (NMFS, 2010). We acknowledge that impacts as a result of global warming or global climate change are threats to Hawaiian monk seal habitat and, therefore, may threaten the survival and conservation of the Hawaiian monk seal. In evaluating these threats, we recognize that rising sea levels have the potential to diminish the number and size of available pupping and nursing areas, as well as haul-out areas, and that this threat exists in both the NWHI and the MHI. Additionally, sea level rise not only has the potential to impact haul-out areas, but resulting changes in ocean biochemistry and currents, coupled with increased ocean temperatures and ocean acidification, may affect Hawaiian monk seal foraging habitat by impacting prey species. It is expected that climatic shifts may result in changes to the range and distribution

of prey species, as well as to the composition and dynamics of the surrounding marine systems (Parmesan, 2006); however, the time scale and extremity in which impacts to marine ecosystems will be realized are still uncertain. These current limitations in predicting the specific changes to the ecosystem prevent us from predicting the resulting impacts to Hawaiian monk seals with any certainty. Given the complex and uncertain impacts of climate change, this threat is best addressed during the individual consultation process across all activities undergoing consultation. In this manner we will be able to incorporate special management considerations to specific activities as the extent of impacts from this threat are demonstrated or better understood. We request any additional information with regard to the threats associated with global climate change and known impacts to Hawaiian monk seal critical habitat, including its essential features (see "Public Comments Solicited").

**Military Areas Ineligible for Designation (4(a)(3) Determinations)**

The Sikes Act of 1997 (Sikes Act, 16 U.S.C. 670a) requires military installations with "land and water suitable for the conservation and management of natural resources" to complete an integrated natural resource management plan (INRMP). The plans are meant to integrate implementation of the military mission of the installation with the stewardship of the natural resources found on site. Each INRMP includes: An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Each INRMP must to the extent appropriate and applicable, provide for: Fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife or plants; and enforcement of applicable natural resource laws. INRMPs are prepared in cooperation with the USFWS and the appropriate state fish and wildlife agency, and are subject to review no less than every 5 years.

Section 4(a)(3)(B)(i) of the ESA states: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

We contacted the Department of Defense (DOD) and requested information on all INRMPs for DOD facilities that overlap with the specific areas considered for designation as critical habitat and that might provide a benefit for Hawaiian monk seals. Both the U.S. Marine Corps (USMC) and the Navy provided us with INRMPs for review under 4(a)(3)(B)(i) of the ESA. The USMC provided an INRMP covering the years 2006–2011 for the Marine Corps Base Hawaii (MCBH). Areas subject to the MCBH INRMP that overlap with the areas under consideration for critical habitat include: Marine Corps Base Hawaii, Kaneohe Bay (MCBH–KB), and the 500-yard buffer zone in marine waters surrounding the Mokapu Peninsula, Oahu; Marine Corps Training Area Bellows (MCTAB) Waimanalo, Oahu; and Puuloa Training Facility, on the Ewa coastal plain, Oahu.

The Navy identified two INRMPs as relevant to this review process: The Pacific Missile Range Facility (PMRF) INRMP and the Naval Station Pearl Harbor INRMP, now referred to as the Joint Base Pearl Harbor-Hickam INRMP. The Navy has been working with cooperating partners, in accordance with the SIKES Act (Sikes Act, 16 U.S.C. 670a), to revise both documents and multiple drafts of the documents and relevant materials were presented to NMFS for review. Areas subject to the PMRF INRMP that overlap with the areas under consideration for critical habitat include: PMRF Main Base at Barking Sands, Kauai; and Kaula Island. Although the 2001 Naval Station Pearl Harbor INRMP only covers those areas in the Pearl Harbor Complex that are not included in the areas under consideration, the Navy has identified that the Joint Base Pearl Harbor-Hickam INRMP will include the following areas that overlap with the proposed designation: The Navy Defensive Sea Area (NDSA), and the marine reserved zone outside Pearl Harbor and Navy retained lands at Kalaeloa (Nimitz Beach and White Plains Beach), Oahu.

To determine whether a plan provides a benefit to the species, we evaluated each plan with regard to the potential conservation benefits to the species, the past known implementation of the management efforts, and the management effectiveness of the plan. Plans determined to be a benefit to the species demonstrated strengths in all three areas of the review. During consideration of the criteria, we determined that an effective management plan must have a structured process to gain information (through monitoring and reporting), a process for recognizing program deficiencies and successes (review), and a procedure for addressing any deficiencies (allowing for adaption for conservation needs).

In review, the MCBH INRMP demonstrated potential conservation benefits for the species, a strong history of plan implementation, and a clear structure to ensure plan effectiveness; thus, the plan was found to be a benefit to the species. Conservation measures outlined in the ecosystem based plan included: Debris removal; prohibitions against lay nets and gill nets in the 500-yard buffer zone; enforcement of established rules via a Conservation Law Enforcement Officer; interagency cooperation for rehabilitation events; use of established procedures for seal haul out and pupping events; educational outreach (including classroom briefs, Web page, news articles, brochures, service projects, and on-site signage and monitoring); ecological assessment and inventories; and water quality projects (minimizing erosion and pollution). Implementation of past efforts was clearly outlined in the appendices for the plan through reports and a schedule of accomplishments. Management effectiveness was demonstrated by: The organized manner in which the plan and appendices outline the goals and objectives; reports and monitoring efforts; the plan's implementation; and the achievement of the goals and objectives. Based on these benefits provided for the Hawaiian monk seal, we determined that the areas covered under the MCBH INRMP on Oahu are not eligible for designation as critical habitat.

Preliminary review of the PMRF INRMP identifies essential elements of a successful conservation program that will benefit the species including: Marine debris removal, monitoring, and prevention; trapping of feral pigs, cats, and dogs; pet restrictions; restriction of public access; protocols to prevent disturbance; public education; training to prevent ship groundings; and compliance and restoration programs for contaminants. Additionally, the Main Base at Barking Sands presents a history of plan implementation and management effectiveness. NMFS is currently working with the Navy to make revisions to the draft plan's performance monitoring element at

Kaula Island and other sites, which will help ensure consistent and effective plan implementation under the PMRF INRMP.

Preliminary review of draft plans for the Joint Base Pearl Harbor-Hickam INRMP demonstrates potential conservation benefits for the species including: Marine debris removal, monitoring, and prevention; pet restrictions; restriction of access; protocol to prevent disturbance during naval activities; public education; training to prevent ship groundings; and compliance and restoration programs for contaminants. Currently, the Navy is working to address concerns raised by NMFS regarding consistent monitoring and management efforts across all sites subject to the INRMP, and working to add a performance monitoring element that will aid in addressing management effectiveness.

If the PMRF or the Joint Base Pearl Harbor-Hickam INRMPs are revised and finalized, meeting the identified concerns, and determined to provide a benefit to Hawaiian monk seals, as described under section 4(a)(3)(B) of the ESA, then the areas would be ineligible for designation. Therefore, a determination on whether the areas warrant exclusion under 4(b)(2) of the ESA based on national security impacts would no longer be necessary. However, for this proposed rule, areas subject to the Navy's INRMPs were separately evaluated to determine the impacts that the proposed designation may have on National Security to meet the considerations established under 4(b)(2) of the ESA. These considerations are discussed in the draft ESA section 4(b)(2) report (NMFS, 2010b) and summarized further under the "Exclusions Based on Impacts on National Security" section of this proposed rule.

**ESA Section 4(b)(2) Analysis**

Section 4(b)(2) of the ESA requires the Secretary to consider the economic, national security, and any other relevant impacts of designating any particular area as critical habitat. Any particular area may be excluded from critical habitat if the Secretary determines that the benefits of excluding the area outweigh the benefits of designating the area. The Secretary may not exclude a particular area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any areas. In this proposed designation, the Secretary has applied statutory discretion to exclude five occupied areas from critical habitat where the benefits of exclusion outweigh the benefits of designation.

The first step in conducting the ESA section 4(b)(2) analysis is to identify the "particular areas" to be analyzed. The "particular areas" considered for exclusion are defined based on the impacts identified. Where we considered economic impacts and weighed the economic benefits of exclusion against the conservation benefits of designation, we used the same biologically-based "specific areas" we had identified under section 3(5)(A) (*e.g.,* Niihau, Kauai, Oahu). Delineating the "particular areas" as the same units as the "specific areas" allowed us to most effectively consider the conservation value of the designation. We also considered exclusions based on impacts on national security and other relevant impacts (*i.e.,* for this designation, impacts on FWS). Delineating particular areas based on impacts on national security or other relevant impacts was based on land ownership or control (*e.g.,* land controlled by the DOD within which national security impacts may exist or land owned or controlled by the USFWS). We request information on other relevant impacts that should be considered (see "Public Comments Solicited"). The next step in the ESA section 4(b)(2) analysis involves identification of the impacts of designation (*i.e.,* the benefits of designation and the benefits of exclusion). We then weigh the benefits of designation against the benefits of exclusion to identify areas where the benefits of exclusion outweigh the benefits of designation. These steps and the resulting list of areas proposed for exclusion from designation are described in detail in the sections below.

*Impacts of Designation*

The primary impact of a critical habitat designation stems from the requirement under section 7(a)(2) of the ESA that Federal agencies insure that their actions are not likely to result in the destruction or adverse modification of critical habitat. Determining this impact is complicated by the fact that section 7(a)(2) contains the overlapping requirement that Federal agencies must also insure their actions are not likely to jeopardize the species' continued existence. One incremental impact of the designation is the extent to which Federal agencies modify their actions to insure their actions are not likely to destroy or adversely modify the critical habitat of the species, beyond any modifications they would make because of the listing and the jeopardy requirement. When a modification would be required due to impacts to both the species and critical habitat, the impact of the designation is considered co-extensive with the ESA listing of the species. Additional impacts of designation include state and local protections that may be triggered as a result of the designation and the benefits from educating the public about the importance of each area for species conservation. Thus, the impacts of the designation include conservation impacts for Hawaiian monk seal and its habitat, economic impacts, impacts on national security, and other relevant impacts that may result from the designation and the application of ESA section 7(a)(2).

In determining the impacts of designation, we focused on the incremental change in Federal agency actions as a result of critical habitat designation and the adverse modification provision, beyond the changes predicted to occur as a result of listing and the jeopardy provision. Following a line of recent court decisions, including: *Arizona Cattle Growers Association* v. *Salazar,* 606 F. 3d 1160 (9th Cir. 2010)) (*Arizona Cattle Growers*); *Home Builders Association of Northern California et al.,* v. *U.S. Fish and Wildlife Service,* 616 F.3d 983 (9th Cir. 2010) (*Home Builders*); and *Cape Hatteras Access Preservation Alliance* v. *Norton,* 344 F. Supp. 2d 108 (D.D.C. 2004)) (*Cape Hatteras*), economic impacts that occur regardless of the critical habitat designation are treated as part of the regulatory baseline and are not factored into the analysis of the effects of the critical habitat designation. In other words, consistent with *Cape Hatteras, Arizona Cattle Growers,* and *Home Builders* decisions, we focus on the potential incremental impacts beyond the impacts that would result from the listing and jeopardy provision. In some instances, potential impacts from the designation could not be distinguished from protections that may already occur under the baseline (*i.e.,* protections already afforded Hawaiian monk seals under its listing or under other Federal, state, and local regulations). For example, the project modifications to prevent the disturbance to an area of critical habitat may be similar to the project modifications necessary to prevent jeopardy to the species in an area. The extent to which these modifications differ may be project specific, and the incremental changes or impacts to the project may be difficult to tease apart without further project specificity. Thus, the analysis may include some impacts or project

modifications that may have been required under the baseline regardless of the critical habitat rule.

Once we determined the impacts of the designation, we then determined the benefits of designation and the benefits of exclusion based on the impacts of the designation. The benefits of designation include the conservation benefits for Hawaiian monk seals and their habitat that result from the critical habitat designation and the application of ESA section 7(a)(2). The benefits of exclusion include the economic impacts, impacts on national security, and other relevant impacts (*e.g.,* impacts on Native lands) of the designation that would be avoided if a particular area were excluded from the critical habitat designation. The following sections describe how we determined the benefits of designation and the benefits of exclusion and how those benefits were weighed as required under section 4(b)(2) of the ESA, to identify particular areas that may be eligible for exclusion from the designation. We also summarize the results of this weighing process and determinations of the areas that may be eligible for exclusion.

*Benefits of Designation*

The primary benefit of designation is the protection afforded under section 7 of the ESA, requiring all Federal agencies to insure their actions are not likely to destroy or adversely modify designated critical habitat. This is in addition to the requirement that all Federal agencies insure their actions are not likely to jeopardize the continued existence of the species. In addition to the protections described above, the designation may also result in other forms of benefits as discussed in detail in the draft Economic Analysis Report (ECONorthwest, 2010), including, but not limited to: educational awareness and outreach benefits, benefits to tourism and recreation, and improved or sustained habitat quality.

Most of these benefits are not directly comparable to the costs of designation for purposes of conducting the section 4(b)(2) analysis described below. Ideally, benefits and costs should be compared on equal terms (*e.g.,* apples to apples); however, there is insufficient information regarding the extent of the benefits and the associated values to monetize all of these benefits. We have not identified any available data to monetize the benefits of designation (*e.g.,* estimates of the monetary value of the essential features within areas designated as critical habitat, or of the monetary value of education and outreach benefits). Further, section 4(b)(2) also requires that we consider and weigh impacts other than economic impacts that do not lend themselves to quantification in monetary terms, such as the benefits to national security of excluding areas from critical habitat. Given the lack of information that would allow us either to quantify or monetize the benefits of the designation for Hawaiian monk seals discussed above, we determined that conservation benefits should be considered from a qualitative standpoint.

In determining the benefits of designation, we considered a number of factors. We took into account the essential features present in the area, the habitat functions provided by each area, and the importance of protecting the habitat for the overall conservation of the species. In doing so, we recognized that Hawaiian monk seal habitat throughout the Hawaiian Archipelago is irreplaceable due to the remote nature of the Hawaiian Islands from other areas of suitable habitat. This is especially true of the newly proposed areas within the MHI, since these areas represent not only habitat where the species is currently thriving, but also a geologically younger area that is under less threat from natural erosion processes and rising sea levels in comparison to available habitat in the NWHI. Therefore, factors attributed to the benefits of the designation of areas were individually considered within each particular area during the exclusion discussions.

*Benefits of Exclusion Based on Economic Impacts and Proposed Exclusions*

The economic benefits of exclusion are the economic impacts that would be avoided by excluding particular areas from the designation. To determine these economic impacts, we identified activities within each specific area that may affect Hawaiian monk seal and its critical habitat. The eight categories of activities are identified in the "*Special Management Considerations and Protections*" section above. We then considered the range of modifications that we might seek in these activities to avoid destroying or adversely modifying Hawaiian monk seal critical habitat (identified in Table 1). Where possible, we focused on changes beyond those that may be required to prevent jeopardy to the continued existence of the species (*i.e.,* protections in place resulting from listing the species). We relied on information from other ESA section 7 consultations and NMFS expertise to determine the types of activities and potential range of changes. Although the project modifications have been identified, we were unable to identify sufficient information to accurately monetize the estimated economic benefits of exclusion beyond the administrative costs of the section 7 consultation, but we recognize that additional economic costs may exist. These costs may vary widely depending on the project scope, location of the project, number of essential features present, as well as the extent of the anticipated impact from the activity.

We contacted a number of Federal and state agencies that are often involved in actions that require section 7 consultations to identify potential projects in areas proposed for designation and the potential economic impacts of the identified project modifications. Agencies contacted were unable to predict specific projects intended for the areas of overlap with the proposed designation, but agreed that there was potential for future projects in these areas. The inability of these agencies to identify potential projects may be in part because most projects tend to occur in highly developed areas that are outside the proposed designation areas. These highly developed harbors and ports (*e.g.,* Pearl Harbor) were not included in the designation because these areas either lack the essential features or the quality of essential features that would be considered essential to the conservation of the Hawaiian monk seal. Another possible explanation is the uncertainty associated with projects that are still in the conceptual phase. Agencies identified that planned projects may take several years to move from conception to completion. The scope and locations which overlap with the proposed designation may not be fully realized; therefore, the costs associated with project modifications have not yet been recognized.

Additionally, agencies identified that many projects have best management practices or standards to protect natural resources. The identified project modifications associated with the proposed designation may overlap with some of these best management practices. Until the difference between the best management practices and identified project modifications are realized in the field, the exact costs of the designation are difficult to determine. For example, a Federal project currently planned may incorporate certain practices to prevent disturbance to wildlife species. If the project were located within the critical habitat designation, measures taken to prevent disturbance may be increased due to the presence of essential features at the site (*e.g.,* a preferred pupping

beach), resulting in additional costs. Until specifications, such as the scope and location, of the project are determined, the variation between project modifications to prevent disturbance for critical habitat and the baseline protections taken to prevent wildlife disturbance at some of these sites is difficult to tease apart; thus, the additional costs are difficult to discern. This inability to realize the costs of projects modifications may also demonstrate the lack of experience with marine critical habitat designations in the developed areas of the Pacific Island region. The proposed Hawaiian monk seal designation represents the first critical habitat designation in the marine environment of the highly developed areas of the MHI.

In reviewing the factors associated with economic costs of the designation, we considered that the economic administrative costs of designation appear relatively low across the MHI where the majority of the incremental effects of the designation should be felt. The economic costs of designation in the NWHI are expected to remain similar, since consultations in this area (where critical habitat is already designated for the Hawaiian monk seal) have been subject to adverse modification considerations since 1988, and additional marine areas are not expected to increase the number of consultations for this region. An exception to this may include activities at Sand Island at Midway Islands because Sand Island was not included in the original designation. However, we have not been made aware of activity plans for Sand Island that may impact essential features. A discussion of impacts at Sand Island may be found under "Other Relevant Impacts." Throughout the proposed critical habitat areas, we found that the activities of concern are already subject to multiple environmental laws, regulations, and permits which afford the proposed essential features a high level of baseline protections, but we also believe that despite these protections, uncertainty remains regarding the true extent of the impacts that some activities may have on the essential features. This uncertainty makes estimating economic impacts of the designation difficult to determine, since, as noted above, project modifications may be considered speculative. The draft Economic Analysis Report (ECONorthwest, 2010) indicates that impacts may be felt most strongly by in-water and coastal construction activities and the disposal of dredge materials. Beyond these impacts, the potential exists for greater economic impacts to activities associated with water quality control and fishing activities as we better understand the impacts that these activities have on the essential features of Hawaiian monk seal critical habitat.

To conduct the ESA 4(b)(2) analysis we considered the aforementioned impacts of designation against the benefits of designating critical habitat for the Hawaiian monk seal in these areas. The Economic Analysis clearly demonstrates the potential for benefits in the tourism industry and through the values that people place on Hawaiian monk seals and the environment in Hawaii, but we focused on what this designation means for the Hawaiian monk seal. In doing so, we acknowledged first that the Hawaiian monk seal population is on the decline (NMFS, 2009). Secondly, we acknowledged that rises in sea level continue to present a threat to the species, especially in the habitat previously designated in the NWHI, and we recognized that the growing population in the MHI represents the best hope for conserving the population. As discussed earlier, the benefits associated with the designation of critical habitat stem from our ability to identify the features that are essential not only for the conservation of the species but also for its recovery. The proposed rule, if finalized as proposed, will in turn provide protections for those essential features through ESA section 7(a)(2) consultations. Specifically designating critical habitat within the MHI provides a means to protect those essential features in an area where the features are most threatened by expansion and development; this will be especially important as the population of seals increases in the MHI. In summary, at this time, we have not identified a particular area where the benefits of exclusion from the designation due to economic impacts outweigh the benefits of designation of Hawaiian monk seal critical habitat; therefore, no areas are proposed for exclusion due to economic impacts.

*Exclusions Based on Impacts to National Security*

The national security benefits of exclusion are the national security impacts that would be avoided by excluding particular areas from the designation. We contacted representatives of DOD and the Department of Homeland Security to request information on potential national security impacts that may result from the designation of particular areas as critical habitat for the Hawaiian monk seal. In response to the request, the U.S. Air Force, the U.S. Army, and the U.S. Coast Guard made no requests for exclusion from the critical habitat areas under consideration. Both the U.S. Navy and the USMC identified sites that overlap with the areas under consideration. Both requested that we exclude all identified sites of overlap that met the definition of critical habitat (*i.e.,* areas that contain essential features that may require special management or protection) from the Hawaiian monk seal critical habitat designation. Sites identified by the USMC subject to the MCBH INRMP (MCBH–KB and the 500-yard (457.2 m) buffer zone in marine waters surrounding the Mokapu Peninsula, Oahu; MCTAB Waimanalo, Oahu; and Puuloa Training Facility, on the Ewa coastal plain, Oahu) are not eligible for critical habitat in accordance with 4(a)(3) of the ESA (See *Military Areas Ineligible for Designation (4(a)(3) determinations*) above).

Consultation and discussion with the Navy and USMC resulted in the identification of 13 areas (See Table 2) that may warrant exclusion based on national security impacts. As in the analysis of economic impacts, we weighed the benefits of exclusion (*i.e.,* the impacts to national security that would be avoided) against the benefits of designation. The Navy and USMC provided information regarding the activities that take place in each area, and they assessed the potential for a critical habitat designation to adversely affect their ability to conduct operations, tests, training, and other essential military activities. The possible impacts to national security summarized by both groups included restraints and constraints on military operations, training, research and development, and preparedness vital for combat operations for around the world.

The primary benefit of exclusion is that the DOD would not be required to consult with NMFS under section 7 of the ESA regarding DOD actions that may affect critical habitat, and thus potential delays or costs associated with conservation measures for critical habitat would be avoided. To assess the benefits of exclusion, we evaluated the intensity of use of the particular area by the DOD, the likelihood that DOD actions in the particular area would affect critical habitat and trigger an ESA section 7 consultation, and the potential conservation measures that may be required and that may result in delays or costs that affect national security. We also considered the level of protection provided to critical habitat by existing DOD safeguards, such as regulations to control public access and use of the area

and other means by which the DOD may influence other Federal actions in the particular area.

The primary benefit of designation is the protections afforded Hawaiian monk seals under the ESA section 7 critical habitat provisions. To evaluate the benefit of designation for each particular area, we considered what is known regarding Hawaiian monk seal use of the particular area, the size of the particular area when compared to the specific area and the total critical habitat area, and the likelihood that other Federal actions occur in the area that may affect critical habitat and trigger a consultation.

As discussed in "The Benefits of Designation" section, the benefits of designation may not be directly comparable to the benefits of exclusion for purposes of conducting the section 4(b)(2) analysis, because neither may be fully quantified. We identified that Hawaiian monk seal use of the area and conservation need for the habitat should be most heavily considered against the impacts (*i.e.,* project modification costs) that the proposed designation, if finalized, may have on DOD activities; however, all factors discussed played a role in the decision. Table 2 outlines the determinations made for each particular area identified and the factors that weighed significantly in that process.

TABLE 2—SUMMARY OF THE ASSESSMENT OF PARTICULAR AREAS REQUESTED FOR EXCLUSION BY THE DOD BASED ON IMPACTS ON NATIONAL SECURITY. LISTED FOR EACH PARTICULAR AREA ARE: DOD SITE AND AGENCY REQUESTING EXCLUSION; THE SPECIFIC AREA THAT THE PARTICULAR AREA OCCURS IN; WHETHER EXCLUSION BASED ON NATIONAL SECURITY IMPACTS IS WARRANTED, AND THE WEIGHING FACTORS FOUND TO BE SIGNIFICANT IN MAKING THE DETERMINATION

| DOD site (size mi$^2$, or km$^2$) and agency | Overlapping specific area (size mi$^2$, or km$^2$) | Exclude(?) | Significant weighing factors |
|---|---|---|---|
| (1) Kaula Island and the 3-mile danger zone (20 mi$^2$, or 52 km$^2$)—Navy. | Area 11—Kaula (39 mi$^2$, 101 or km$^2$). | No ..... | Site was determined to be highly used by Hawaiian monk seals. Navy activities are not likely to impact essential features given current protocols; therefore, there is no impact to national security that can be avoided through exclusion. |
| (2) Niihau, including all waters 0–12 nmi offshore (200$^+$ mi$^2$, or 518$^+$ km$^2$)—Navy. | Area 12—Niihau (200 mi$^2$, or 518 km$^2$). | No ..... | Area requested for exclusion included the entire specific area which is currently the highest used area by Hawaiian monk seals in the MHI and therefore very important to monk seal conservation. The benefits of designation outweigh the benefits of exclusion. |
| (3) Kingfisher Underwater Training Area off of Niihau (2 mi$^2$, or 5 km$^2$)—Navy. | Area 12—Niihau (200 mi$^2$, or 518 km$^2$). | Yes ..... | The site is located near an important area used by monk seals; however, the particular area requested is relatively small in comparison to the specific area proposed for designation. Navy protocol currently provides some protection for seals utilizing this habitat. Impacts to national security may result from section 7 consultations specific to the construction and maintenance of the training range. The benefits of exclusion outweigh the benefits of designation for this area. |
| (4) PMRF, Main Base at Barking Sands, Kauai (8 mi, or 13 km)—Navy. | Area 13—Kauai (90 mi, or 145 km). | Yes ..... | Impacts from amphibious landings may impact essential features; therefore, national security impacts may result from section 7 consultations. Although the area is used by monk seals, current protocols in place and base regulations provide protections for monk seals in this area. The benefits of exclusion outweigh the benefits of designation for this area. |
| (5) PMRF Offshore areas (including: PMRF restricted area, Barking Sands Tactical Underwater Range (BARSTUR), and the Shallow Water Training Range (SWTR)) (99 mi$^2$, or 256 km$^2$)—Navy. | Area 13—Kauai (326 mi$^2$, or 844 km$^2$). | Yes ..... | Essential features may be impacted by the installation of hydrophones across the range; therefore, national security impacts may result from section 7 consultations. Although the area is used by monk seals, current protocols in place provide protections for monk seals in this area. The benefits of exclusion outweigh the benefits of designation for this area. |
| (6) Barbers Point/Kalaeloa Navy retained areas—White Plains (15 acres, or 6 hectares) and Nimitz (21 acres, or 8.5 hectares) Beaches—Navy. | Area 14—Oahu (697 mi$^2$, or 1,805 km$^2$). | No ..... | No activities were demonstrated for this area; therefore there is no impact to national security that could be avoided through exclusion. |
| (7) Naval Defensive Sea Area (NDSA) and Puuloa Underwater Training Range (<20 mi$^2$, or 52 km$^2$)—Navy. | Area 14—Oahu (697 mi$^2$, or 1,805 km$^2$). | Yes ..... | Essential features may be impacted by activities on site, and the location provides a training area that is only found in one other location nationwide. National security impacts may result from section 7 consultations. Area is not highly used by Hawaiian monk seals. The benefits of exclusion outweigh the benefits of designation. |
| (8) Commercial Anchorages B, C, D; (1 mi$^2$, or 2.6 km$^2$)—Navy. | Area 14—Oahu (697 mi$^2$, or 1,805 km$^2$). | No ..... | Area is open for commercial anchorage purposes. It is unlikely that Navy activities will impact essential features at this site; therefore, there is no impact to national security that may be avoided through exclusion. |

TABLE 2—SUMMARY OF THE ASSESSMENT OF PARTICULAR AREAS REQUESTED FOR EXCLUSION BY THE DOD BASED ON IMPACTS ON NATIONAL SECURITY. LISTED FOR EACH PARTICULAR AREA ARE: DOD SITE AND AGENCY REQUESTING EXCLUSION; THE SPECIFIC AREA THAT THE PARTICULAR AREA OCCURS IN; WHETHER EXCLUSION BASED ON NATIONAL SECURITY IMPACTS IS WARRANTED, AND THE WEIGHING FACTORS FOUND TO BE SIGNIFICANT IN MAKING THE DETERMINATION—Continued

| DOD site (size $mi^2$, or $km^2$) and agency | Overlapping specific area (size $mi^2$, or $km^2$) | Exclude(?) | Significant weighing factors |
|---|---|---|---|
| (9) Fleet Operational Readiness Accuracy Check Site (FORACS) (12 $mi^2$, 31 $km^2$)—Navy. | Area 14—Oahu (697 $mi^2$, or 1,805 $km^2$). | No | It is unlikely that Navy activities will impact essential features at this site; therefore, there is no impact to national security that could be avoided through exclusion. Area is utilized frequently by Hawaiian monk seals. |
| (10) Barbers Point Underwater Range and Ewa Training Minefield (9 $mi^2$, or 23 $km^2$)—Navy. | Area 14—Oahu (697 $mi^2$, or 1,805 $km^2$). | No | Navy activities at this site may impact the essential features of critical habitat; however, this area is highly used by Hawaiian monk seals and important to monk seal conservation. The benefits of designation outweigh the benefits of exclusion. |
| (11) Marine Corps Training Area Bellows Offshore—Navy and USMC (size not estimated). | Area 14—Oahu (697 $mi^2$, or 1,805 $km^2$). | No | It is unlikely that Navy activities will impact essential features at this site; therefore, there is no impact to national security that would be avoided through exclusion. |
| (12) Shallow Water Minefield Sonar Training Range off Kahoolawe (4 $mi^2$, or 10 $km^2$)—Navy. | Area 15—Maui Nui (2,510 $mi^2$, or 6,500 $km^2$). | Yes | Although the site is located near an important area used by monk seals, the area requested is relatively small in comparison to the specific area. Navy protocol currently provides some protection for seals utilizing this habitat. Impacts to national security may result from section 7 consultations specific to the construction and maintenance, which may impact essential features. The benefits of exclusion outweigh the benefits of designation for this area. |
| (13) Kahoolawe Danger Zone (68 $mi^2$, or 176 $km^2$)—Navy. | Area 15—Maui Nui (2,510 $mi^2$, or 6,500 $km^2$). | No | Area is well used by Hawaiian monk seals and supports pupping and nursing areas. Activities demonstrated for this area are a matter of public safety; therefore, there is no impact to national security that would be avoided through exclusion. |

*Other Relevant Impacts*

Section 4(b)(2) of the Act also allows for the consideration of "other relevant impacts" associated with the designation of critical habitat. Comments received following the 90-day finding indicated that both the NPS and the USFWS anticipated impacts as a result of the designation. Both agencies were contacted in preparation for the proposed rule with information regarding the areas under consideration for the revision to Hawaiian monk seal critical habitat and asked to identify relevant impacts to their agencies, as well as to identify measures or protections that were in place to protect the Hawaiian monk seal or the essential features. The NPS concluded that a request for exclusion was not necessary, after corresponding with NMFS regarding impacts of the designation. Exclusion was requested by the USFWS for Sand Island at Midway Islands. USFWS identified economic and administrative burdens from the proposed designation and stated that the designation is an unnecessary burden since the Papahanaumokuakea Marine National Monument already afforded the Hawaiian monk seal the highest levels of protection and conservation. The USFWS did not quantify economic burdens but did identify that administrative requirements would not only have economic impacts but would detract from staff time, which in turn would detract from conservation initiatives being properly overseen and implemented on site.

As with the national security exclusions, the primary benefit of excluding Sand Island is that the USFWS organization would not be required to consult with NMFS under section 7 of the ESA regarding actions that may affect critical habitat, and thus potential delays or costs associated with conservation measures for critical habitat would be avoided. To assess the benefits of excluding Sand Island, we evaluated the relative proportion of the area requested for exclusion, the intensity of use of the area, and the likelihood that actions on site will destroy or adversely modify habitat requiring additional section 7 delays, costs, or burdens. We also considered the likelihood of consultation with the agency in this area and the level of protection provided to critical habitat by existing USFWS safeguards.

The primary benefit of designation is the protections afforded Hawaiian monk seals under the ESA section 7 critical habitat provisions. To evaluate the benefit of designation for each particular area, we considered what is known regarding Hawaiian monk seal use of the particular area, the size of the particular area compared to the specific area and the total critical habitat area, and the likelihood that other Federal actions may occur in the area that may affect critical habitat and trigger a consultation.

In reviewing this information, we found that Sand Island at Midway Islands provides habitat with the essential features of preferred haul-out areas and preferred pupping areas in the northwestern end of the chain. These features are very important to the declining population of the NWHI. USFWS acknowledged that its management plans provide protections for Hawaiian monk seals from disturbance, but revealed no additional plans that may impact the essential features of Hawaiian monk seal critical habitat. In considering the above listed factors, we were not able to identify any activities that the USFWS wished to engage in at this site that would impact the essential features of Hawaiian monk seal critical habitat. We acknowledge that consultation of activities on site will continue to be necessary due to listing of the species but cannot

anticipate additional burdens on the agency without the identification of activities that may generate impacts to the essential features. Thus, there appears to be no benefit of exclusion. At this time, and with the present information, we do not recommend Sand Island at Midway Islands for exclusion. We solicit information from the public regarding any additional areas that may overlap with and may warrant exclusion from critical habitat for Hawaiian monk seals (see "Public Comments Solicited").

**Critical Habitat Designation**

This rule proposes to designate approximately 11,140 $mi^2$ (28,853 $km^2$) of habitat throughout the Hawaiian Archipelago within the geographical area presently occupied by the Hawaiian monk seal. These critical habitat areas contain physical or biological features essential to the conservation of the species that may require special management considerations or protection. This rule proposes to exclude from the designation the following areas: Kingfisher Underwater Training area in marine areas off the northeast coast of Niihau; Pacific Missile Range Facility Main Base at Barking Sands, Kauai; Pacific Missile Range Facility Offshore Areas in marine areas off the western coast of Kauai; the Naval Defensive Sea Area and Puuloa Underwater Training Range in marine areas outside Pearl Harbor, Oahu; and the Shallow Water Minefield Sonar Training Range off the western coast of Kahoolawe in the Maui Nui area. Based on our best scientific knowledge and expertise, we conclude that the exclusion of these areas will not result in the extinction of the species, nor impede the conservation of the species.

**Lateral Extent of Critical Habitat**

The lateral extent of the proposed critical habitat designation offshore is defined by the 500-m depth contour relative to the line of mean lower low water (MLLW) and shoreward to 5 m inland (in length) from the shoreline described by the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth or the upper limit of debris (except those areas that are indicated with boundaries as not included in the designation listed with the identified areas and manmade structures existing within the boundaries prior to the effective date of the rule). The textual descriptions of critical habitat in the section titled "226.221 Critical habitat for the Hawaiian monk seal (*Monachus schauinslandi*)" are the definitive source for determining the critical habitat boundaries. The overview maps provided in "226.221 Critical habitat for the Hawaiian monk seal (*Monachus schauinslandi*)" are provided for general guidance purposes only and not as a definitive source for determining critical habitat boundaries. As discussed in previous critical habitat designations, human activities that occur outside of designated critical habitat can destroy or adversely modify the essential features of these areas. This designation will help to insure that Federal agencies are aware of the impacts that activities occurring outside of the proposed critical habitat area (*e.g.,* coastal development, activities that generate water pollution) may have on Hawaiian monk seal habitat.

**Effects of Critical Habitat Designation**

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to insure that any action authorized, funded, or carried out by the agency (agency action) does not jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. When a species is listed or critical habitat is designated, Federal agencies must consult with us on any agency action to be conducted in an area where the species is present and that may affect the species or its critical habitat. During the consultation, we evaluate the agency action to determine whether the action may adversely affect listed species or critical habitat and issue our finding in a biological opinion. If we conclude in the biological opinion that the agency action would likely result in the destruction or adverse modification of critical habitat, we would also recommend any reasonable and prudent alternatives to the action. Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where: (1) Critical habitat is subsequently designated; or (2) new information or changes to the action may result in effects to critical habitat not previously considered in the biological opinion. Consequently, some Federal agencies may request re-initiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat. Activities subject to the ESA section 7 consultation process include activities on Federal lands and activities on private or state lands requiring a permit from a Federal agency (*e.g.,* a section 10(a)(1)(B) permit from NMFS) or some other Federal action, including funding (*e.g.,* Federal Highway Administration (FHA) or Federal Emergency Management Agency (FEMA) funding). ESA section 7 consultation would not be required for Federal actions that do not affect listed species or critical habitat, nor for actions on non-Federal and private lands that are not carried out, funded, or authorized by a Federal agency.

**Activities That May Be Affected**

ESA section 4(b)(8) requires, to the maximum extent practicable, in any proposed regulation to designate critical habitat, an evaluation and brief description of those activities (whether public or private) that may adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect Hawaiian monk seal critical habitat and may be subject to the ESA section 7 consultation processes when carried out, funded, or authorized by a Federal agency. The activities most likely to be affected by this critical habitat designation once finalized are: (1) In-water and coastal construction; (2) dredging and disposal of dredged material; (3) energy development (renewable energy projects); (4) activities that generate water pollution; (5) aquaculture ; (6) fisheries; (7) oil spills and vessel groundings response activities; and (8) military activities. Private entities may also be affected by this critical habitat designation if a Federal permit is required, Federal funding is received, or the entity is involved in or receives benefits from a Federal project. These activities would need to be evaluated with respect to their potential to destroy or adversely modify critical habitat. Changes to the actions to minimize or avoid destruction or adverse modification of designated critical habitat may result in changes to some activities. Please see the draft Economic Analysis Report (ECONorthwest, 2010) for more details

and examples of changes that may need to occur in order for activities to minimize or avoid destruction or adverse modification of designated critical habitat. Questions regarding whether specific activities would constitute destruction or adverse modification of critical habitat should be directed to NMFS (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

**References Cited**

A complete list of all references cited in this rule making may be found on our Web site at *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html,* and is available upon request from the NMFS (see **ADDRESSES**).

**Public Comments Solicited**

To ensure the final action resulting from this proposal will be as accurate and effective as possible, we solicit comments and suggestions from the public, other concerned governments and agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Specifically, public comments are sought concerning: (1) Information regarding potential impacts of designating any particular area, including the types of Federal activities that may trigger an ESA section 7 consultation and the possible modifications that may be required of those activities as a result of section 7 consultation; (2) information regarding the benefits of excluding particular areas from the critical habitat designation; (3) current or planned activities in the areas proposed for designation and their possible impacts on proposed critical habitat; (4) impacts to Native Hawaiian organizations resulting from the designation or Native Hawaiian activities that may be affected in areas other than those specifically owned by the organization; (5) additional information regarding the threats associated with global climate change and known impacts to Hawaiian monk seal critical habitat and/or Hawaiian monk seal essential features (6) any foreseeable economic, national security, Tribal, or other relevant impacts resulting from the proposed designations. With regard to these described impacts, we request that the following information be provided to inform our ESA section 4(b)(2) analysis: (1) A map and description of the affected area (*e.g.,* location, latitude and longitude coordinates to define the boundaries, extent into waterways); (2) a description of activities that may be affected within the area; (3) a description of past, ongoing, or future conservation measures conducted within the area that may protect Hawaiian monk seal habitat; and (4) a point of contact.

You may submit your comments and materials by any one of several methods (see **ADDRESSES**). The proposed rule, maps, references, and other materials relating to this proposal can be found on our Web site at *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html* on the Federal eRulmaking Portal at *http://www.regulation.gov,* or can be made available upon request. We will consider all comments and information received during the comment period for this proposed rule in preparing the final rule.

**Public Hearings**

Regulations at 50 CFR 424.16(c)(3) require the Secretary to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed rule to designate critical habitat. Requests for a public hearing must be made in writing (see **ADDRESSES**) by August 16, 2011. If a public hearing is requested, a notice detailing the specific hearing location and time will be published in the **Federal Register** at least 15 days before the hearing is to be held. Information on specific hearing locations and times will also be posted on our Web site at *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html.* These hearings provide the opportunity for interested individuals and parties to comment, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. We encourage the public's involvement in such ESA matters.

**Classification**

*Information Quality Act and Peer Review*

On December 16, 2004, the Office of Management and Budget (OMB) issued its Final Information Quality Bulletin for Peer Review (Bulletin). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664), and went into effect on June 16, 2005. The primary purpose of the Bulletin is to improve the quality and credibility of scientific information disseminated by the Federal government by requiring peer review of "influential scientific information" and "highly influential scientific information" prior to public dissemination. Influential scientific information is defined as "information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions." The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. Stricter standards were established for the peer review of "highly influential scientific assessments," defined as information whose "dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest." The draft Biological Report (NMFS, 2010a) and draft Economic Analysis report (ECONorthwest, 2010) supporting this rule proposing to designate critical habitat for the Hawaiian monk seal are considered influential scientific information and subject to peer review. These two reports were distributed to three independent reviewers for review before the publication date of this proposed rule. The peer reviewer comments will be compiled into a peer review report to be made available to the public at the time the Hawaiian monk seal critical habitat designation is finalized.

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

This proposed rule has been determined to be significant for purposes of E.O. 12866. A draft Economic Analysis report and draft ESA section 4(b)(2) report (NMFS, 2010b) have been prepared to support the exclusion process under section 4(b)(2) of the ESA and our consideration of alternatives to this rulemaking as required under E.O. 12866. The draft Economic Analysis report (ECONorthwest, 2010) and draft ESA section 4(b)(2) report (NMFS, 2010b) are available on the Pacific Islands Region Web site at *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html,* on the Federal eRulemaking Web site at *http://www.regulations.gov,* or upon request (see **ADDRESSES**).

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis describing the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). An initial regulatory flexibility analysis (IRFA) has been prepared, which is included as

Appendix C to the draft 4(b)(2) report (NMFS, 2010b). This document is available upon request (see **ADDRESSES**), via our Web site at *http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html* or via the Federal eRulemaking Web site at *http://www.regulations.gov.*

We identified the impacts to small businesses by considering the eight activities that were identified as most likely impacted by the designation: (1) In-water and coastal construction; (2) dredging and disposal of dredged material; (3) energy development (renewable energy projects); (4) activities that generate water pollution; (5) aquaculture; (6) fisheries; (7) oil spills and vessel groundings response activities; and (8) military activities. Due to the inherent uncertainty involved in predicting possible economic impacts that could result from future consultations, we acknowledge that other unidentified impacts may occur, and we invite public comment on those impacts. As discussed in the "Benefits of Exclusion Based on Economic Impacts and Proposed Exclusions" section of this proposed rule, we were not able to find sufficient information to accurately monetize the estimated economic benefits of exclusion beyond the administrative costs of the ESA section 7 consultation, and found overall that administrative economic costs of the designation appear to be low. Activities most likely to be impacted by this rule, if finalized as proposed, include construction projects happening in-water or along the coastline that overlap with the proposed designation. In reviewing impacts to small businesses, we recognized that impacts may result from actions that a small business carries out within the boundaries of the proposed critical habitat areas that are permitted by the Federal Government, or funded by the Federal Government. In both cases the small business may be responsible for bearing the cost of project modifications or administrative work resulting from a section 7 consultation. In addition, small businesses may be impacted indirectly if the company's earnings are dependent on Federal actions that undergo section 7 consultations as a result of the designation (*e.g.,* contractors that are hired to carry out Federal actions). Ideally we would be able to monetize these potential impacts, but insufficient information is available to determine the extent, scope, and location of activities that may be carried out by small businesses in the areas of overlap or to what extent small businesses are dependent on earnings from Federal actions that may undergo section 7 consultation within the areas of the proposed designation. The inability to identify future projects in the area of overlap with the proposed designation may be in part because most projects in the MHI that are subject to the consultation requirements of ESA tend to occur in highly developed areas, and these areas were not included in the designation due to the lack of, or poor quality of, essential features (*e.g.* Pearl Harbor). Thus, many projects in the planning stages may still only overlap with areas not included in the designation. Additionally, the full extent of impacts may not yet be realized because there is currently no critical habitat designation in the marine environment of the MHI, and, therefore, no history with which to predict those impacts due to inexperience in dealing with marine critical habitat designations in the MHI.

In accordance with the requirements of the RFA, as amended, this analysis considered various alternatives to the critical habitat designation for the Hawaiian monk seal. The alternative of not designating critical habitat for the Hawaiian monk seal was considered and rejected because such an approach does not meet the legal requirements of the ESA. We considered the alternative of designating all specific areas (*i.e.,* no areas excluded); however, in some cases the benefits of excluding particular areas based on national security impacts outweighed the benefits of including them in the designation. Thus, we also considered the alternative of designating all specific areas, but excluding particular areas based on the impacts to national security. This alternative may help to reduce the indirect impact to small businesses that are economically involved with military activities in these areas; however, there is insufficient information to monetize the benefits of these exclusions at this time. In conclusion, we were unable to determine significant economic impacts (NMFS, 2010b) based on this designation; and, current information does not suggest that small businesses will be disproportionately affected by this designation. We solicit additional information regarding the impacts to small businesses that may result from this proposed designation, and we will consider any additional information received in developing our final determination to designate or exclude areas from critical habitat for the Hawaiian monk seal.

*Clarity of the Rule*

Executive Order (E.O.) 12866 requires each agency to write regulations and notices that are easy to understand. We invite-your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of section, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand? You may submit comments on how we could make this proposed rule easier to understand by any one of several methods (see **ADDRESSES**).

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act, we make the following findings:

(A) This proposed rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." The designation of critical habitat does not impose an enforceable duty on non-Federal government entities or private parties. The only regulatory effect of a critical habitat designation is that Federal agencies must insure that their actions do not destroy or adversely modify critical habitat under ESA section 7. Non-Federal entities who receive funding, assistance, or permits from Federal agencies or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program; however, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above to State governments.

(B) Due to the prohibition already in place against take of the Hawaiian monk seal both within and outside of the designated areas, we do not anticipate that this proposed rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

*Takings*

Under E.O. 12630, Federal agencies must consider the effects of their actions

on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property that substantially affect its value or use. In accordance with E.O. 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat generally affects only those activities and projects that are authorized, funded, or carried out by a Federal agency. This proposed rule would not increase or decrease the current restrictions on private property concerning take of Hawaiian monk seals, nor do we expect the proposed critical habitat designation to affect property values, or impose additional burdens on land use or landowner actions that do not require Federal funding or permits. Additionally, the proposed critical habitat designation does not preclude the development of Habitat Conservation Plans and issuances of incidental take permits for non-Federal actions. Owners of areas included within the proposed critical habitat designation would continue to have the opportunity to use their property in ways consistent with the survival of listed Hawaiian monk seals.

*Federalism*

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Pursuant to the Executive Order on Federalism, E.O. 13132, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action and request comments from the governor of the State of Hawaii.

*Civil Justice Reform*

In accordance with E.O. 12988, the Department of Commerce has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order. We are proposing critical habitat in accordance with the provisions of the ESA. This proposed rule uses standard property descriptions and identifies the essential features within the designated areas to assist the public in understanding the habitat needs of the Hawaiian monk seal.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This proposed rule does not contain new or revised information collections that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This proposed rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (NEPA)*

We have determined that an environmental analysis as provided for under the NEPA of 1969 for critical habitat designations made pursuant to the ESA is not required. *See Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), *cert. denied,* 116 S. Ct. 698 (1996).

*Coastal Zone Management Act of 1972 (CZMA)*

The CZMA emphasizes the primacy of state decision-making regarding the coastal zone. Section 307 of the CZMA (16 U.S.C. 1456), called the Federal consistency provision, is a major incentive for states to join the national coastal management program and is a powerful tool that states use to manage coastal uses and resources and to facilitate cooperation and coordination with Federal agencies.

Federal consistency is the CZMA requirement where Federal agency activities that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone (also referred to as coastal uses or resources and coastal effects) must be consistent to the maximum extent practicable with the enforceable policies of a coastal state's Federally approved coastal management program. We have determined that this proposed critical habitat designation is consistent to the maximum extent practicable with the enforceable policies of the approved Coastal Zone Management Program of Hawaii. This determination will be submitted for review by the Hawaii Coastal Zone Management Program.

*Government to Government Relationship With Tribes*

The longstanding and distinctive relationship between the Federal and Tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate Tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States towards Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, Tribal trust resources, and the exercise of Tribal rights. E.O. 13175—Consultation and Coordination with Indian Tribal Governments—outlines the responsibilities of the Federal Government in matters affecting Tribal interests. Federally recognized Tribe means an Indian or Alaska Native Tribe or community that is acknowledged as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. In the list published annually by the Secretary, there are no Federally recognized Tribes in the State of Hawaii (74 FR 40218; August 11, 2009). Therefore, while we value information on the effects of this rule on the interests of Native Hawaiians, Native Hawaiian lands are not Tribal lands for purposes of the requirements of the President's Memorandum or the Department Manual. However, we recognize that Native Hawaiian organizations have the potential to be impacted by Federal regulations and, as such, that consideration of these impacts may be evaluated as other relevant impacts from the designation. We have opened communication with some Native Hawaiian organizations, and at this time have not been made aware of anticipated impacts resultant from the designation. We seek comments regarding areas of overlap with the designation that may warrant exclusion from critical habitat for the Hawaiian monk seal. We also seek information from affected Native Hawaiian organizations concerning other Native Hawaiian activities that may be affected in areas other than those specifically owned by the organization (*e.g.* marine areas)(see Public Comments Solicited and **ADDRESSES**).

**List of Subjects in 50 CFR Part 226**

Endangered and threatened species.

Dated: May 24, 2011.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, this rule proposes to amend part 226, title 50 of the Code of Federal Regulations as set forth below:

## PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation of part 226 continues to read as follows:

**Authority:** 16 U.S.C. 1533.

2. Add § 226.221, to read as follows:

### § 226.221 Critical habitat for the Hawaiian monk seal (Monachus schauinslandi).

Critical habitat is designated for Hawaiian monk seals as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview maps are provided for general guidance purposes only and not as a definitive source for determining critical habitat boundaries.

(a) *Critical habitat boundaries.*

(1) *Northwestern Hawaiian Islands:* The Hawaiian monk seal critical habitat areas located in the Northwestern Hawaiian Islands include all beach areas, sand spits, and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to the 500-m depth contour around the following (except those areas that have been identified as not included in the designation):

(i) Kure Atoll—center coordinates: 28°25′11.00″ N./178°19′45.00″ W.

(ii) Midway Islands—center coordinates: 28°14′12.00″ N./177 22′06.00″ W. (Midway Harbor is not included in the designation. The boundaries of Midway Harbor were delineated to incorporate the inner harbor and hardened shorelines of the harbor. The polygon includes the area bounded by the point at the seaward edge of the northern breakwater at the harbor entrance (28°12′44.31″ N./177°21′35.64″ W.) then north along the breakwater to where the breakwater meets the coastline at 28°12′54.06″ N./177°21′38.69″ W. then west to 28°12′56.63″ N./177°22′18.42″ W. then south to 28°12′30.88″ N./177°22′23.89″ W. then east to 28°12′32.68″ N./177°21′44.63″ W. then north to the seaward edge of the southern breakwater at the harbor entrance (28°12′39.99″ N./177°21′38.04″ W.) and a line back to meet the seaward edge of the northern breakwater at Midway Harbor's entrance.)

(iii) Pearl and Hermes Reef—center coordinates: 27°50′37.000″ N./175°50′32.00″ W.

(iv) Lisianski Island—center coordinates: 26°03′49.00″ N./173°58′00.00″ W.

(v) Laysan Island—center coordinates: 25°46′11.00″ N./171°43′57.00″ W.

(vi) Maro Reef—center coordinates: 25°25′27.00″ N./170°35′19.00″ W.

(vii) Gardner Pinnacles—center coordinates: 25°0′00.00″ N./167°59′55.00″ W.

(viii) French Frigate Shoals—center coordinates: 23°45′31.00″ N./166°14′37.00″ W.

(ix) Necker Island—center coordinates: 23°34′36.00″ N./164°42′01.00″ W.

(x) Nihoa Island—center coordinates: 23°03′23.00″ N./161°55′18.99″ W.

(2) Main Hawaiian Islands: Hawaiian monk seal critical habitat areas surrounding the following islands listed below are defined in the marine environment by a seaward boundary that extends from the 500-m depth contour line (relative to mean lower low water), through the water's edge into the terrestrial environment where the inland boundary extends 5 m inland (in length) from the shoreline described by the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth or the upper limit of debris (except those areas that are indicated with boundaries as not included in the designation listed with each identified area). Terrestrial areas not included have a seaward boundary of a line that marks mean lower low water between the two identified points.

(i) Kaula Island.

(ii) Niihau Island.

(iii) Kauai Island—Areas identified as not included in the designation of this specific area are defined as the following locations and are delineated by the identified boundaries: Hanalei Bay delineated by all terrestrial coastline areas located between the Makahoa Point (22°12′49.48″ N./159°31′01.82″ W.) east to 22°12′56.10″ N./159°29′52.82″ W. and all waters located inshore of a line drawn between those two points; Kikiaola Harbor delineated by all terrestrial coastline areas from 21°57′34.92″ N./159°41′36.36″ W. east to 21°57′28.89″ N./159°41′34.91″ W. and all harbor waters located inshore of the line drawn between the seaward edge of western breakwater at the harbor's entrance (21°57′28.58″ N./159°41′36.57″ W.) and the seaward edge of eastern breakwater at the harbor's entrance (21°57′27.19″ N./159°41′41.34″ W.); Kilauea Point Cliff area delineated by all terrestrial coastlines located between 22°13′50.27″ N./159°24′07.42″ W. east around to 22°13′50.97″ N./159°24′05.68″ W.; Na Pali coast cliffs delineated by the mouth of the Hanakapiai stream (22°12′30.35″ N./159°35′53.00″ W.) south west to the mouth of the Kalalau Stream (22°10′43.33″ N./159°39′03.42″ W.); Nawiliwili Harbor delineated as all terrestrial coastlines between Kukii Point Light (21°57′23.80″ N./159°20′52.70″ W.) south to where the southern breakwater meets the shoreline (21°56′54.65″ N./159°21′03.15″ W.) and all waters inshore of a line drawn from Nawiliwili Harbor Breakwater Light (21°57′11.68″ N./159°20′54.94″ W.) east to Kukii Point Light (21°57′23.80″ N./159°20′52.70″ W.) (*i.e.,* the harbor's USCG defined COLREG line); Hanapepe Bay and Port Allen delineated by all terrestrial coastlines between the Hanapepe Light (21°53′34.55″ N./159°36′15.55″ W.) east to where the Hanapepe breakwater meets the shoreline to the east (21°53′54.97″ N./159°35′14.50″ W.) and all waters inshore of the line drawn from Hanapepe Light (21°53′34.55″ N./159°36′15.55″ W.) east to Hanapepe Bay Breakwater (21°53′49.10″ N./159°35′27.25″ W.) (*i.e.,* the harbor's USCG defined COLREG line); Waikaea Canal delineated by all terrestrial coastline, structures and waters inshore of the line drawn from the seaward edge of the southern breakwater at the mouth of the canal (22°04′14.7″ N./159°18′58.98″ W.) north to the seaward edge of the northern breakwater at the mouth of the canal (22°04′16.41″ N./159°18′58.00″ W.); Wailua Canal delineated as all coastline and waters located inshore of the bridge crossing the Wailua River or a line drawn between 22°02′41.13″ N./159°20′11.95″ W. south to 22°02′44.27″ N./159°20′10.93″ W.

(iv) Oahu—Areas identified as not included in the designation of this specific area are defined as the following locations and are delineated by the identified boundaries: Pearl Harbor to Kapua Channel delineated by all terrestrial coastlines between Keahi point (21°18′57.95″ N./157°58′42.82″ W.) east to eastern edge of the Kapua channel (21°15′28.77″ N./157°49′07.51″ W.) and all waters out to depth of the 3 fathoms between the line drawn from Keahi point (21°18′57.95″ N./157°58′42.82″ W.) to meet the 3 fathom contour following the 3 fathom contour east to a line drawn from the eastern edge of the Kapua channel (21°15′28.77″ N./157°49′07.51″ W.) out to meet the 3 fathom contour ; Haleiwa Harbor delineated by all terrestrial coastlines between where the eastern breakwater meets the coastline (21°35′47.44″ N./158°06′16.15″ W.) west to where the western breakwater meets the coastline (21°35′42.59 N./158°06′25.19″ W.) and all waters in the harbor inshore of the line drawn between breakwater Light 6

(21°35′47.63″ N./158°06′22.42″ W.) and the seaward edged of the eastern breakwater (21°35′47.44″ N./158°06′16.15″ W.); Maunalua Bay and Hawaii Kai Harbor delineated as all coastline and waters located inshore of the line drawn between 21°16′53.22″ N./157°43′21.77″ W. east to the point 21°15′49.13″ N./157°42′41.45″ W.; Kalaeloa Barbers Point delineated as all coastline and waters located inshore of the line drawn between the harbor's entrance channel Light 6 (21°19′19.07″ N./158°07′16.08″ W.) north to harbor entrance channel Light 7 (21°19′23.81″ N./158°07′19.82″ W.); Kaneohe Bay delineated as all coastlines and waters located inshore of the line drawn from Pyramid Rock Light (21°27′44.12″ N./157°45′48.69″ W.) through the center of Mokolii Island to the shoreline (21°30′59.27″ N./157° 50′10.01″ W.) (*i.e.,* the bay's USCG defined COLREG line); Waianae Small Boat harbor delineated by all coastlines between northern point where the breakwater meets the coastline 21°27′4.15″ N./158°11′54.59″ W. south through to the range front light (21°26′55.57″ N./158°11′46.70″ W.) and all waters inside the harbor located inshore of the line drawn between the range front light (21°26′55.57″ N./158°11′46.70″ W.) west to the breakwater Light 1 described by the USCG at (21°26′50.68″ N./158°11′48.90″ W.).

(v) Maui Nui—Areas identified as not included in the designation of this specific area are defined as the following locations and are delineated by the identified boundaries: Hana wharf and ramp, Maui is delineated by all terrestrial coastlines from 20°45′18.53″ N./155°58′56.32″ W. east to 20°45′19.93″ N./155°58′54.12″ W.; Kahului Harbor is delineated by all terrestrial coastline between where the hardened shoreline meets the beach to the west of the harbor (20°53′53.05″ N./156°28′47.87″ W.) east to where the hardened shoreline meets the beach to the east of the harbor (20°53′49.07″ N./156°27′38.84″ W.) and all waters located inshore of the line drawn between the west breakwater Light 4 (20°54′01.16″ N./156°28′26.82″ W.) east to the east breakwater Light 3 (20°54′02.36″ N./156°28′17.43″ W.) (*i.e.,* the harbor's USCG defined COLREG line); Kihei boat ramp, Maui is delineated by all terrestrial coastlines between 20°42′31.34″ N./156°26′46.95″ W. south to 20°42′27.19″ N./156°26′46.13″ W. and all waters in the harbor located inshore of the line drawn between 20°42′31.34″ N./156°26′46.95″ W. west to the seaward edge of the northern point on the breakwater at the harbor entrance (20°42′30.29″ N./156°26′48.46″ W.); Lahaina harbor, Maui is delineated by all terrestrial coastlines between 20°52′21.63″ N./156°40′44.05″ W. south to 20°52′11.67″ N./156°40′38.53″ W. and all waters in the harbor located inshore of the line drawn from 20°52′21.63″ N./156°40′44.05″ W. to the seaward edge of the breakwater at the harbor entrance (20°52′18.18″ N./156°40′45.33″ W.); Maalaea Harbor is delineated by all terrestrial coastlines between where the western hardened shoreline meets the coast (20°47′23.65″ N./156°30′49.85″ W.) east to where the eastern hardened shoreline meets the coast (20°47′32.07″ N./156°30′34.24″ W.) and all waters in the harbor located inshore of the line drawn from the seaward edge of the west breakwater at the harbor entrance (20°47′24.74″ N./156°30′39.18″ W.) east to the seaward edge of the east breakwater at the harbor entrance (20°47′24.59″ N./156°30′36.41″ W.); Mala wharf and ramp, Maui is delineated by all hardened structures and coastline between the point where the hardened structures of the wharf meets the coastline on the south side of the wharf (20°53′05.20″ N./156°41′12.47″ W.) north to the southern edge of the Kahoma stream (20°53′07.86″ N./156°41′10.78″ W.); Nakalahale cliff region, Lanai is delineated by all coastline between 20°44′31.86″ N./156°52′46.92″ W. east to 20°45′05.8458″ N./156°52′00.8214″ W.; Kaholo cliff region, Lanai is delineated by all coastline between 20°46′40.33″ N./156°59′19.02″ W. south to 20°44′17.52″ N./156°58′03.36″ W.; Manele Harbor, Lanai is delineated by all terrestrial coastlines from where the Manele Harbor breakwater meets the coastline (20°44′29.34″ N./156°53′15.88″ W.) north to 20°44′34.95″ N./156°53′15.45″ W. and all waters located inshore of a line drawn between the seaward extension of the breakwater (20°44′30.38″ N./156°53′16.33″ W.) north to 20°44′34.95″ N./156°53′15.45″ W.; Kamalapau Harbor, Lanai is delineated by all terrestrial coastline between 20°47′29.37″ N./156°59′20.04″ W. south to 20°47′07.94″ N./156°59′21.51″ W.; Haleolono Harbor, Molokai is delineated by all hardened structures and coastline between 21°05′13.04″ N./157°15′03.68″ W. east to 21°05′04.43″ N./157°14′54.82″ W. and all waters located inshore of the line drawn between the seaward edge of the west breakwater 21°05′01.21″ N./157°14′58.95″ W. east to the seaward edge of the east breakwater 21°05′04.43″ N./157°14′54.82″ W.; Kaunakakai Pier, Molokai is delineated by all terrestrial coastline between 21°05′14.83″ N./157°01′30.42″ W. east to 21°05′09.12″ N./157°01′23.05″ W.; and Kalaupapa Harbor is delineated by all terrestrial coastline between 21°11′26.09″ N./156°59′04.76″ W. south to 21°11′23.57″ N./156°59′04.12″ W.

(vi) Hawaii—Areas identified as not included in the designation of this specific area are defined as the following locations and are delineated by the identified boundaries: Hilo harbor delineated by all water inshore of a line drawn from the seaward extremity of the Hilo Breakwater 265° true (as an extension of the seaward side of the breakwater) (19°44′34.53″ N./155°04′29.98″ W.) west to the shoreline 0.2 nautical mile north (19°44′28.74″ N./155°05′23.80″ W.) of Alealea Point or the harbor's USCG defined COLREG line and delineated by all terrestrial coastlines between 0.2 nautical mile north (19°44′28.74″ N./155°05′23.80″ W.) of Alealea Point east to 19°43′55.88″ N./155° 03′01.68″ W.; Honokohau harbor delineated by all terrestrial coastlines and waters inshore and inland of the line drawn between the Honokohau entrance channel Light 3 (19°40′11.52″ N./156°01′37.84″ W.) and the Honokohau entrance channel Light 4 (19°40′09.41″ N./156°01′35.90″ W.) Kailua-Kona Wharf delineated by all coastlines and waters located inshore of the line drawn between 19°38′17.09″ N./155°59′53.05″ W. east to 19°38′17.69″ N./155°59′39.43″ W.; Kawaihae Harbor all coastlines and hardened structures located between Kawaihae Light (20°02′29.12″ N./155°49′58.21″ W.) south to 20°01′42.29″ N./155°49′25.20″ W. and all waters located inshore of the line drawn between Kawaihae Light (20°02'29.12" N./155°49′58.21″ W.) and the seaward extremity of the Kawaihae breakwater Light 6 (20°02′14.21″ N./155°50′02.00″ W.); Keauhou boat harbor all terrestrial coastlines between 19°33′39.63″ N./155°57′45.06″ W. east to 19°33′42.89″ N./155°57′42.69″ W.; Mahukona Harbor all coastlines and structures located between 20°10′59.62″ N./155°54′03.57″ W. east to 20°11′02.21″ N./155°54′01.99″ W.; and the active lava flow areas along the coastline.

(b) *Essential Features:* The essential features for the conservation of the Hawaiian monk seal are:

(1) *Areas with characteristics preferred by monk seals for pupping and nursing.* Preferred pupping areas generally include sandy, protected beaches, which are located adjacent to shallow sheltered aquatic areas. Terrestrial pupping habitat may incorporate various substrates including sand, shallow tide-pools, coral rubble, or rocky substrates as long as these substrates provide accessibility to seals

for hauling out. Characteristics of preferred sites may also incorporate areas with low lying vegetation utilized by the pair for shade or cover.

(2) *Shallow, sheltered aquatic areas adjacent to coastal locations preferred by monk seals for pupping and nursing.* Sheltered marine areas provide protection for the mom and pup pair from predators and extreme weather events, as well as provide protected habitat necessary for newly weaned pups to learn to forage. Characteristics of the sheltered aquatic sites may include reefs, tide pools, gently sloping beaches, and shelves or coves that provide refuge from storm surges and predators.

(3) *Marine areas from 0 to 500 m in depth preferred by juvenile and adult monk seals for foraging.* Foraging habitat is necessary for the growth, and viability of all life stages. Foraging habitat may range from barrier reefs, leeward slopes of reefs and islands, submarine ridges, nearby seamounts, submerged reefs and banks, and deep coral beds. Preferred foraging habitat of adult monk seals is characterized by sand terraces and talus slopes. These habitats provide substrate and materials for preferred benthic and cryptic prey species to hide.

(4) *Areas with low levels of anthropogenic disturbance.* Areas with low levels of anthropogenic disturbance are necessary to prevent the abandonment of preferred haul-out sites essential for pupping and nursing, and hauling out.

(5) *Marine areas with adequate prey quantity and quality.* Food resources of adequate abundance and safe from contaminants are required for the growth and survival of all of the life stages of the Hawaiian monk seal. Prey resources may include a variety of species including some benthic and offshore teleosts, cephalopods, and crustaceans.

(6) *Significant areas used by monk seals for hauling out, resting or molting.* Haul-out sites are generally characterized by sandy beaches, sand spits, or low shelving reef rocks accessible to seals. Sites favored by seals may also reflect areas that are remote in nature or with low levels of human disturbance. Haul out areas provide necessary habitat for normal behavior, growth, and viability of all life stages. Critical habitat does not include manmade structures (*e.g.,* docks, seawalls, piers, fishponds, roads, pipelines) and the land on which they are located existing within the boundaries on the effective date of this rule.

(c) Overview maps of Hawaiian monk seal critical habitat follow:

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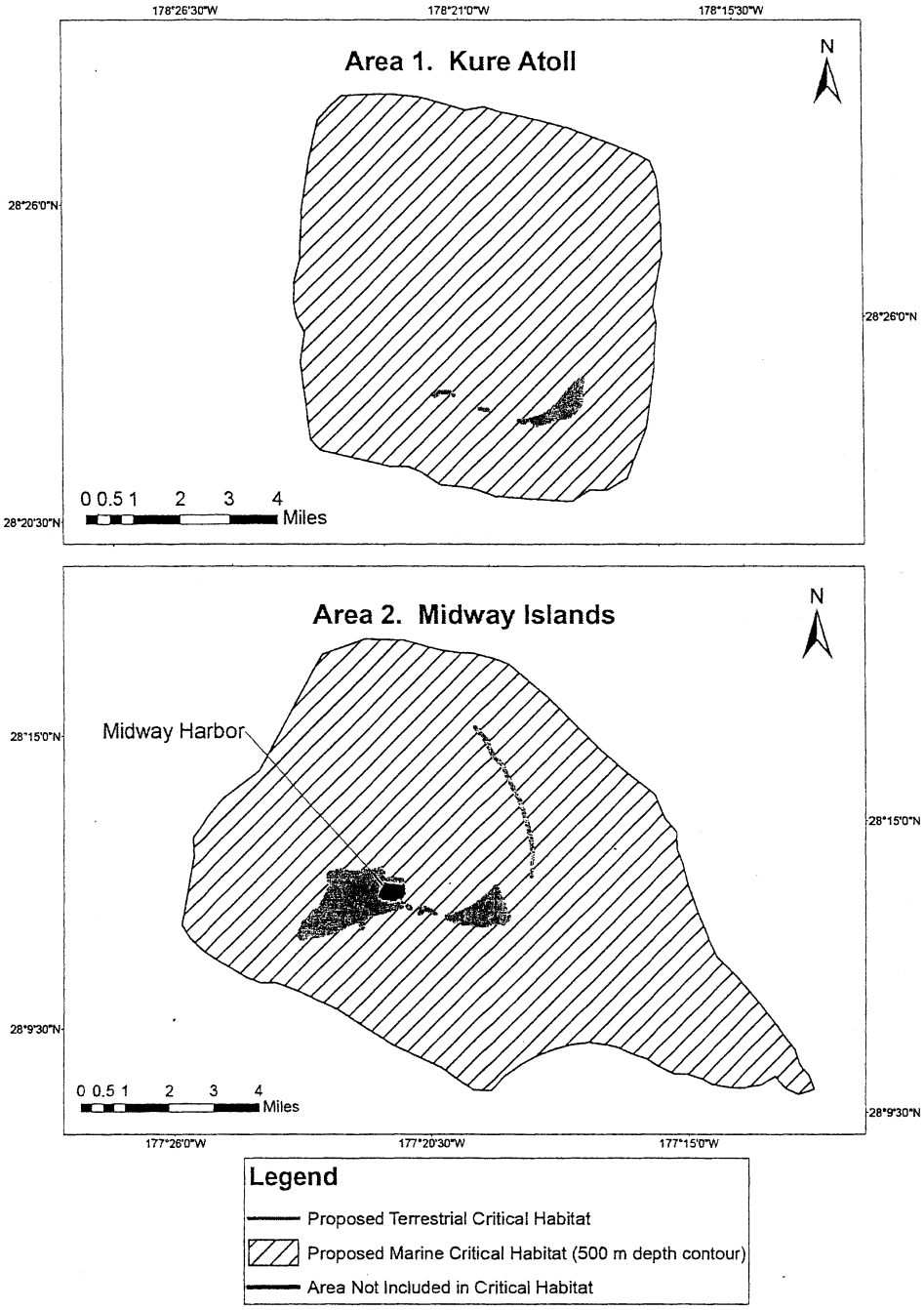
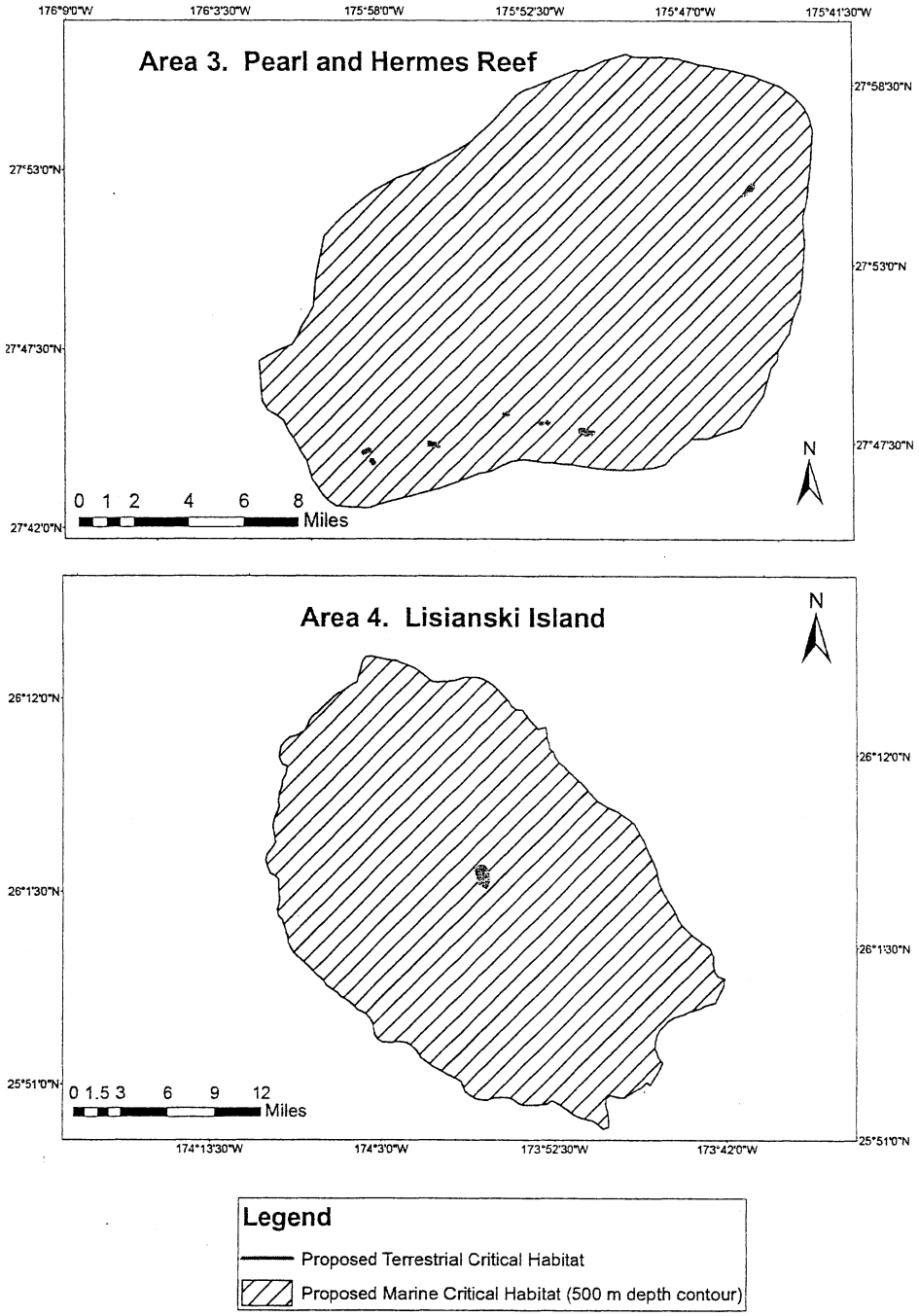
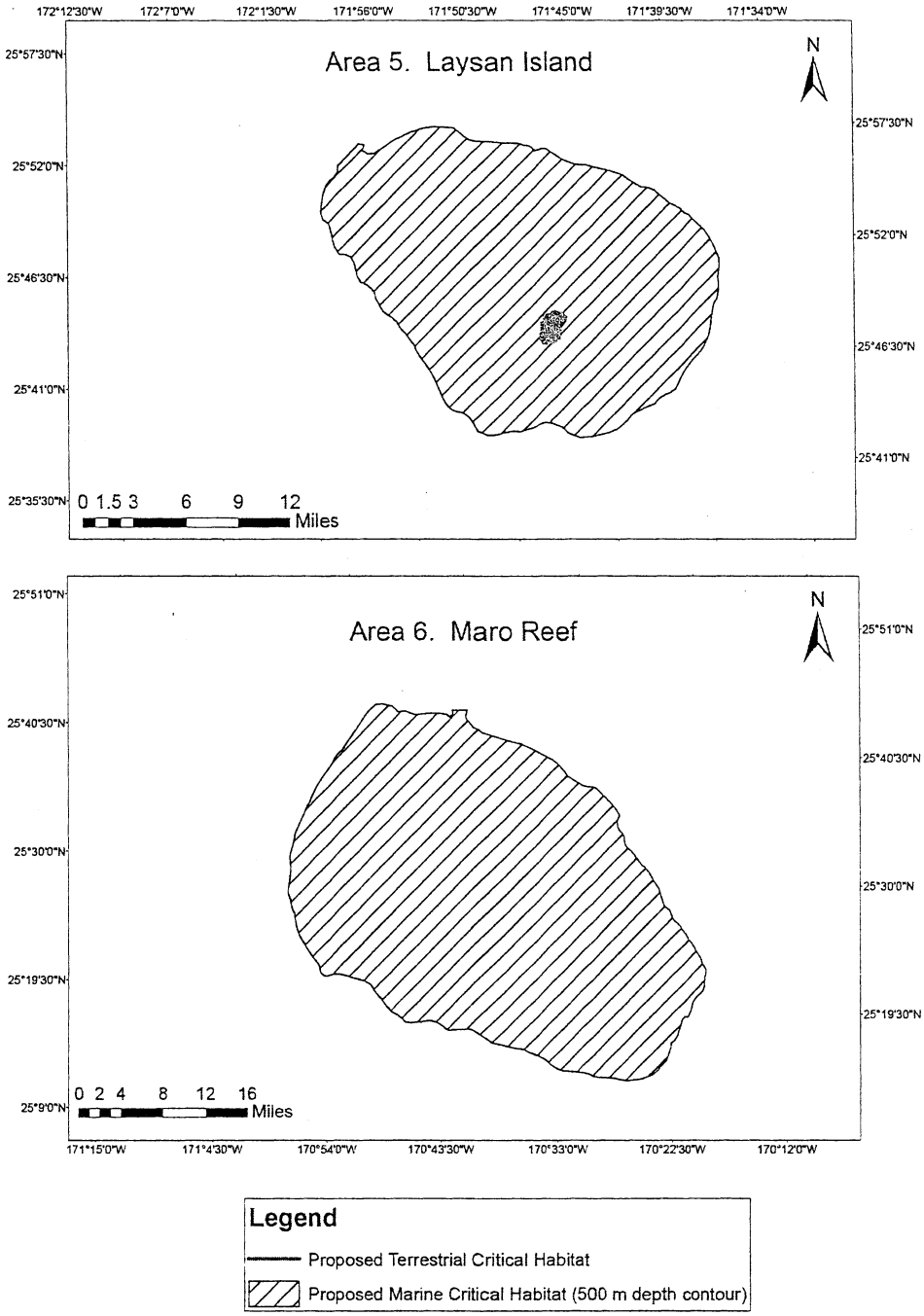
**Proposed Hawaiian Monk Seal Critical Habitat**
**Specific Areas 1-2**



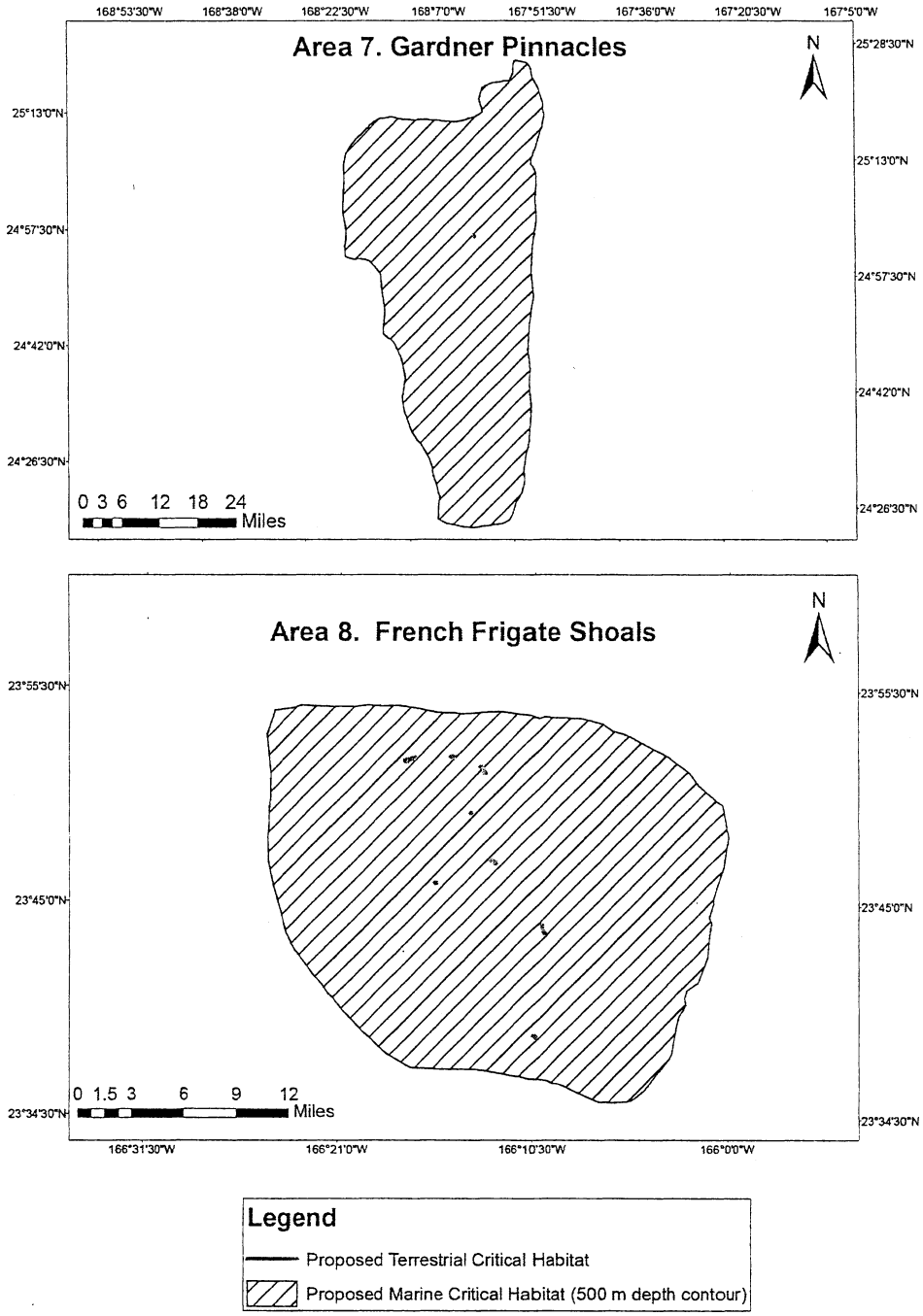
Proposed Hawaiian Monk Seal Critical Habitat
Specific Areas 3-4



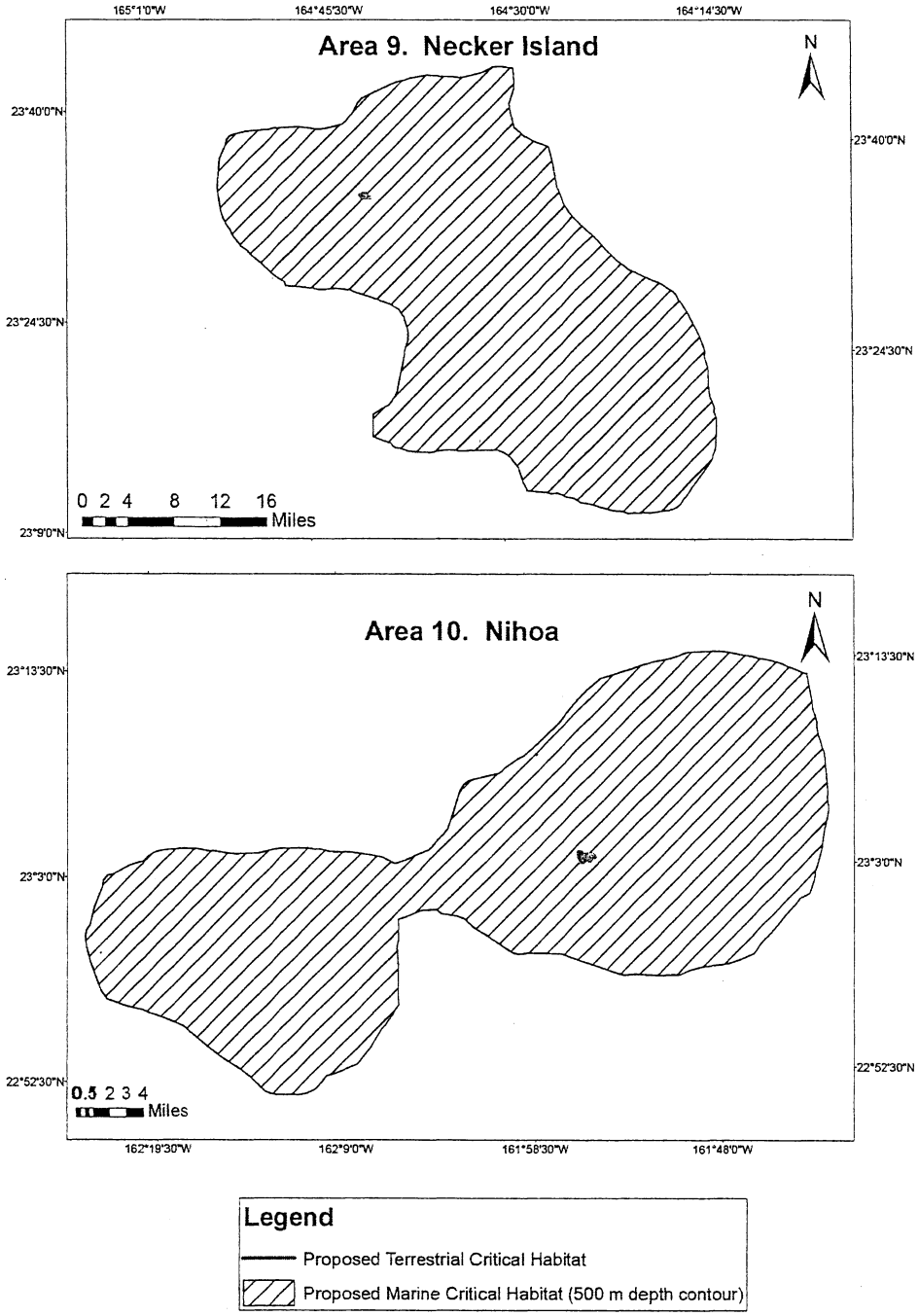
**Proposed Hawaiian Monk Seal Critical Habitat**
**Specific Areas 5-6**



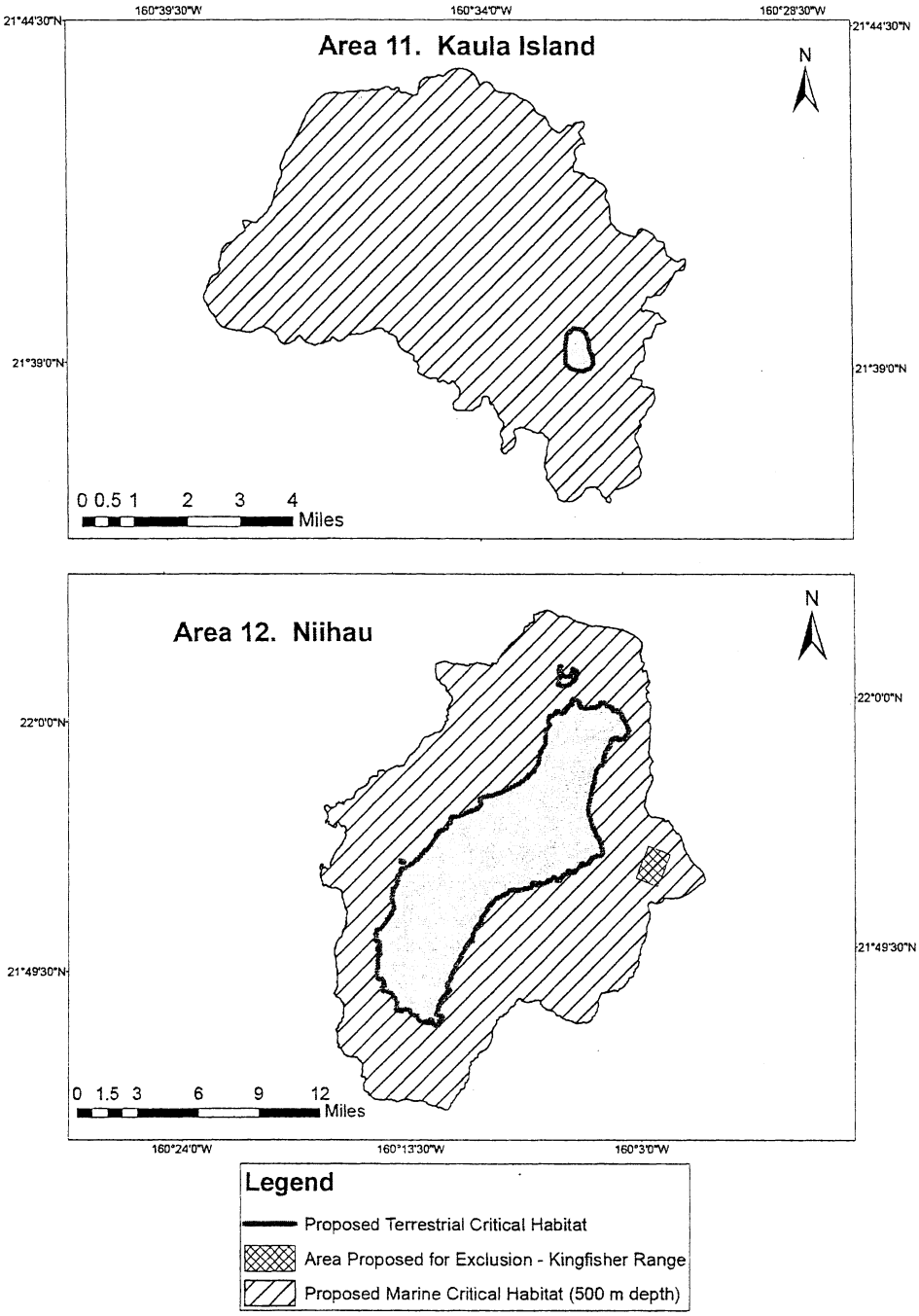
Proposed Hawaiian Monk Seal Critical Habitat
Specific Areas 7-8



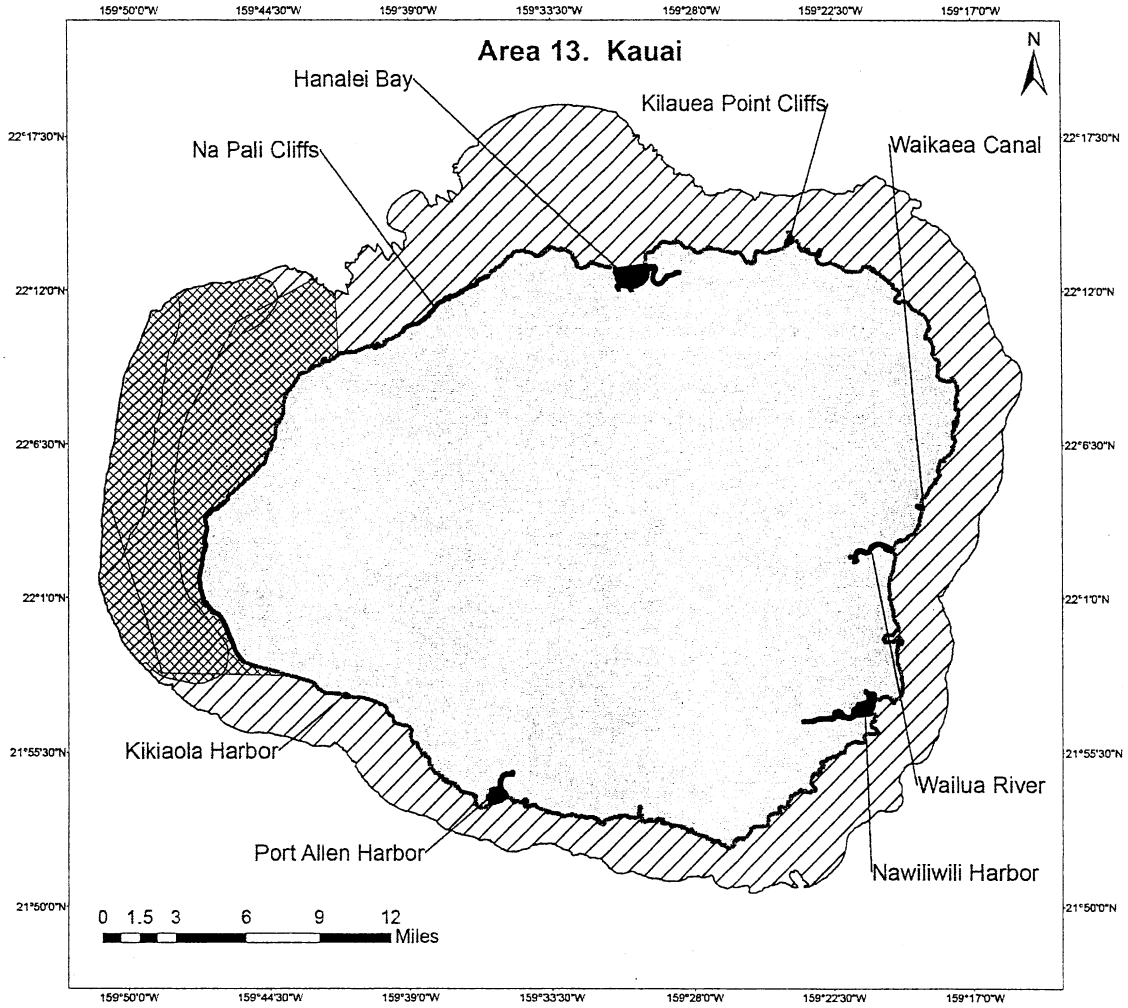
**Proposed Hawaiian Monk Seal Critical Habitat**
**Specific Areas 9-10**



Proposed Hawaiian Monk Seal Critical Habitat
Specific Areas 11-12



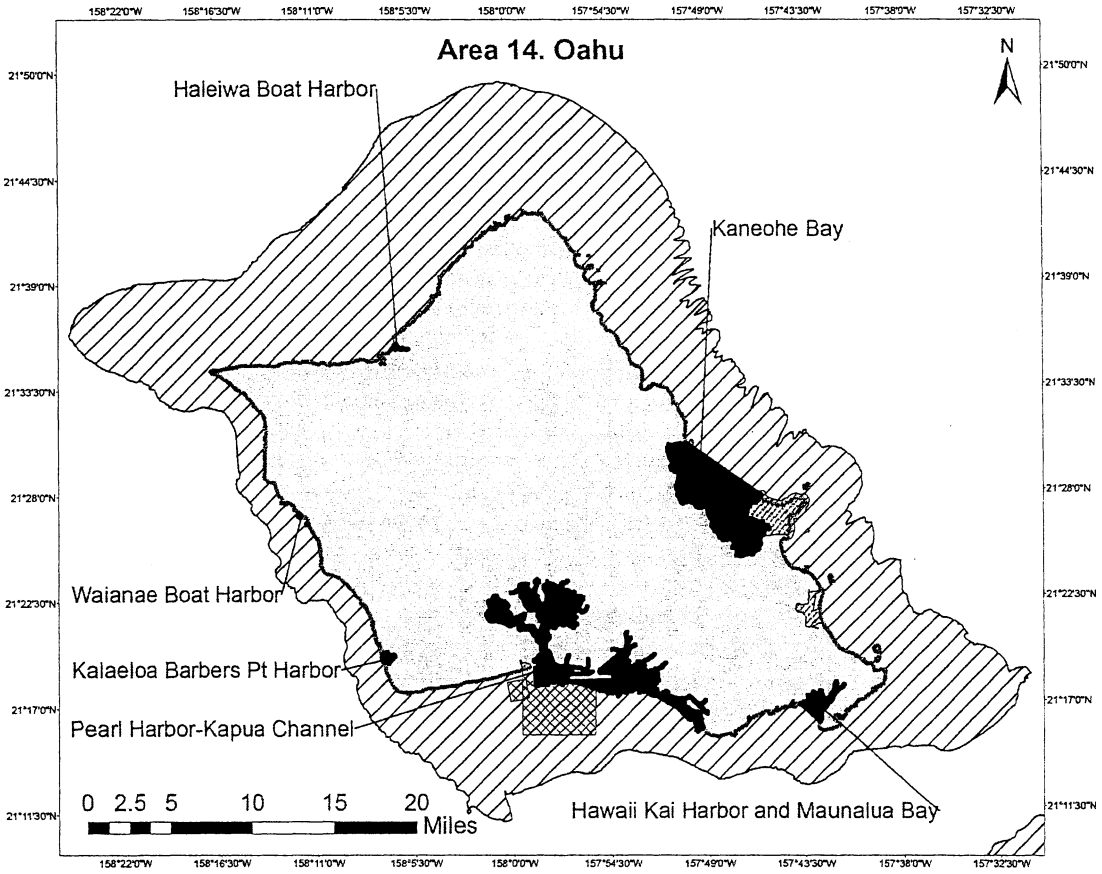
**Proposed Hawaiian Monk Seal Critical Habitat**
**Specific Area 13**




**Legend**

- Areas Not Included in Proposed Critial Habitat
- Proposed Terrestrial Critical Habitat
- Proposed Marine Critical (500 m depth contour)
- Area Proposed for Exclusion - PMRF (Offshore and PMRF Main Base)

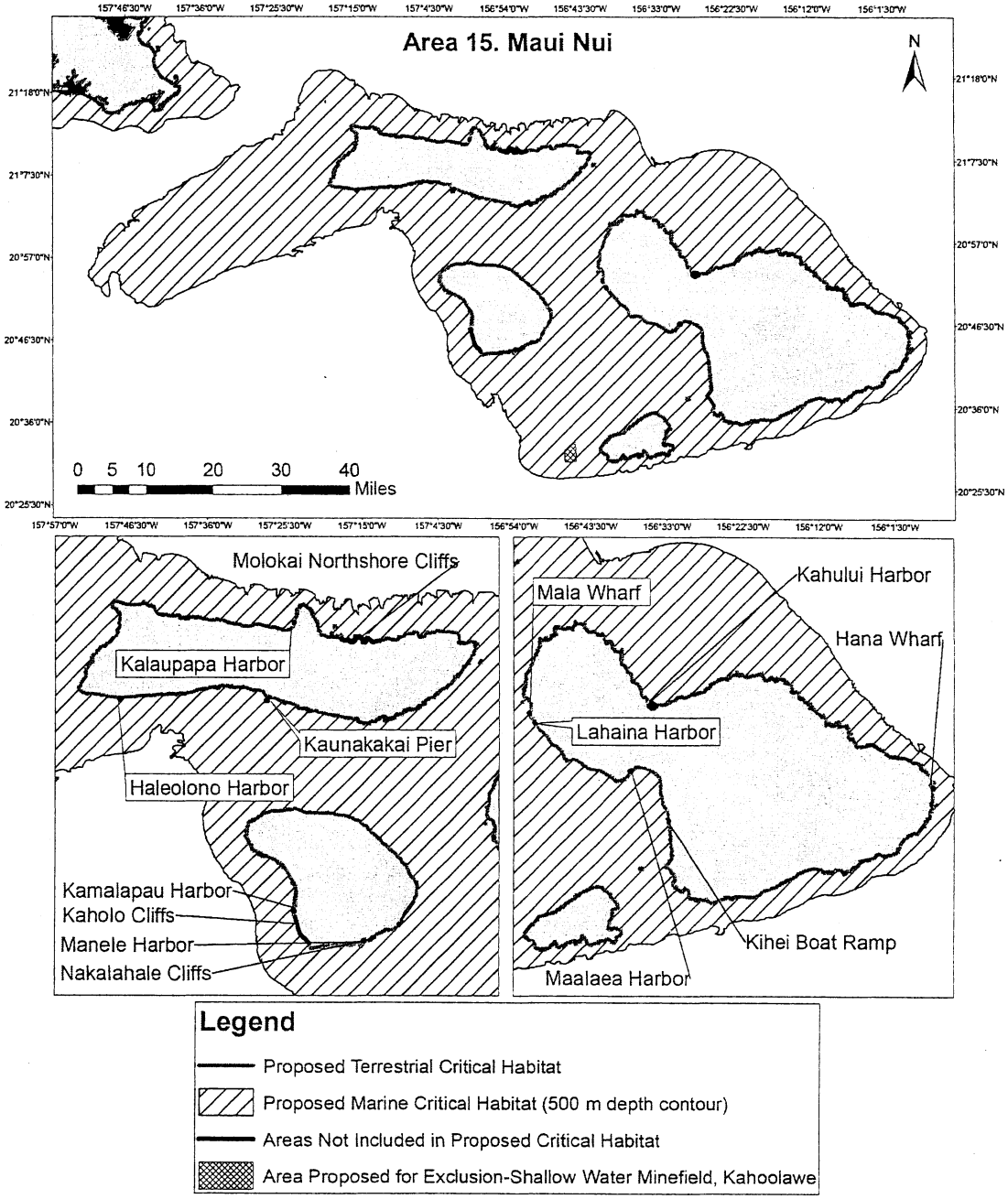
**Proposed Hawaiian Monk Seal Critical Habitat**
**Specific Area 14**



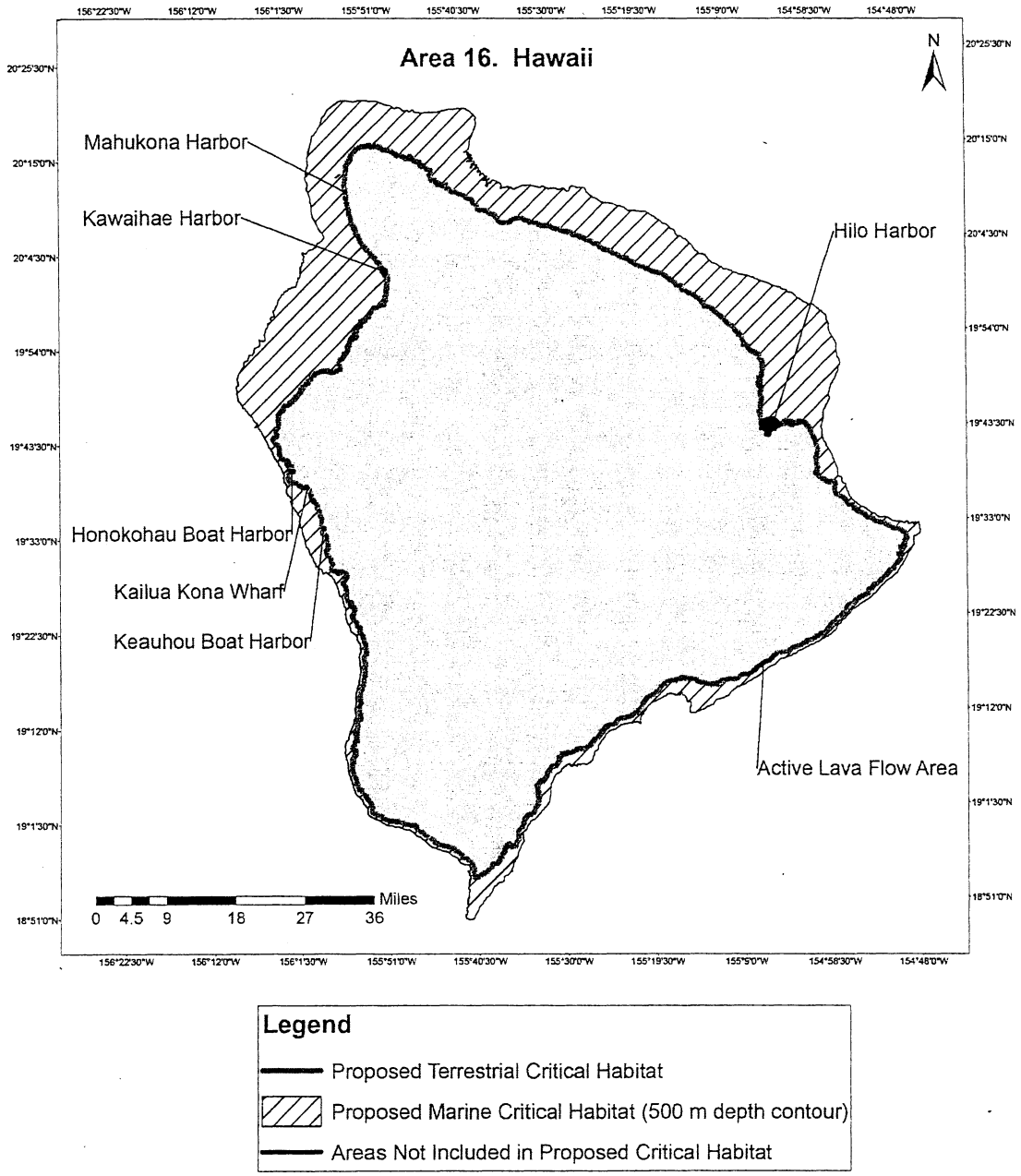

**Legend**

- Proposed Terrestrial Critical Habitat
- Proposed Marine Critical Habitat (500 m depth contour)
- Areas Not Included in Proposed Critical Habitat
- Area Proposed for Exclusion - NDSA & Puuloa Underwater Training Range
- Areas Ineligible for Critical Habitat - INRMP Marine Corps Base Hawaii

**Proposed Hawaiian Monk Seal Critical Habitat**
**Specific Area 15**



**Proposed Hawaiian Monk Seal Critical Habitat**
**Specific Area 16**




[FR Doc. 2011–13381 Filed 6–1–11; 8:45 am]
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Thursday, June 2, 2011

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