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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Doc. No. AMS–FV–11–0019; FV11–916/917–5 FIR]

Nectarines and Peaches Grown in California; Suspension of Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that suspended the quality, inspection, reporting, and assessment requirements specified under the California nectarine and peach marketing orders (orders). The interim rule suspended the handling regulations for the 2011 and subsequent marketing seasons relieving handlers of all regulatory burdens under the orders while USDA processes the terminations of the orders.

DATES: Effective July 22, 2011.

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 obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, S.W., 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 rule is issued under Marketing Agreement Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, 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.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The handling of nectarines and peaches grown in California is regulated by 7 CFR parts 916 and 917, respectively. In early 2011, USDA conducted mandatory referenda among California nectarine and peach growers to determine if they favored continuation of their programs. The referenda results demonstrated a lack of grower support for continuing the orders. Thus, USDA intends to terminate the orders.

In an interim rule published in the **Federal Register** on April 18, 2011, and effective on April 19, 2011, (76 FR 21615, Doc. No. AMS–FV–11–0019, FV11–916/917–5 IR), §§ 916.110, 916.115, 916.234, 916.235, 916.350 and 916.356 and 917.143, 917.150, 917.258, 917.259, 917.442, and 917.459, were suspended indefinitely.

Final Regulatory Flexibility Analysis

Pursuant to 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 action on small entities. Accordingly, AMS has prepared this final 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, and about 447 growers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration 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 (13 CFR 121.201). 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 continues in effect the suspension of the quality, inspection, reporting, and assessment requirements for nectarines and peaches under the orders. This action is consistent with USDA's decision to seek termination of the nectarine and peach order provisions. Suspension of the requirements is expected to reduce the regulatory burden on handlers and growers of all sizes.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the orders' information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Marketing Order Administration Branch

Generic OMB Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large California nectarine or peach handlers. 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.

Comments on the interim rule were required to be received on or before June 17, 2011. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-11-0019-0001.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that the regulatory requirements suspended by the interim rule, (76 FR 21615, April 18, 2011), affirmed in this action, do not tend to effectuate the declared policy of the Act.

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.

Accordingly, the interim rule that amended 7 CFR parts 916 and 917 and that was published at 76 FR 21615 on April 18, 2011, is adopted as a final rule, without change.

Dated: July 14, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–18396 Filed 7–20–11; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

[NRC–2011–0058]

RIN 3150–AI94

Alternative to Minimum Days Off Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations governing the fitness for duty of workers at nuclear power plants. These amendments allow holders of nuclear power plant operating licenses the option to use a different method from the one already prescribed in the NRC's regulations for determining when certain nuclear power plant workers must be afforded time off from work to ensure that such workers are not impaired due to cumulative fatigue caused by work schedules.

DATES: *Effective Date:* This final rule is effective August 22, 2011.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov/* and search for documents filed under Docket ID NRC–2011–0058. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668, *e-mail: Carol.Gallagher@nrc.gov*.
- *NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
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FOR FURTHER INFORMATION CONTACT: Howard Benowitz, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; *telephone:* 301–415–4060; *e-mail: Howard.Benowitz@nrc.govmailto:Howard.Benowitz@nrc.gov*.

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I. Background

A. NRC's Fitness for Duty Regulations

On March 31, 2008, the NRC promulgated a final rule which substantially revised its regulations for fitness for duty (FFD) in Title 10 of the *Code of Federal Regulations* (10 CFR) part 26 (73 FR 16966; March 31, 2008). The revised regulations updated the NRC's FFD requirements and made them more consistent with other relevant Federal rules, guidelines, and drug and alcohol testing programs that impose similar requirements on the private sector.

In addition, by establishing clear and enforceable requirements for the management of worker fatigue, the 2008 amendments require nuclear power plant licensees to ensure that worker fatigue does not adversely affect public health and safety and the common defense and security. Among these fatigue management requirements is a minimum days off requirement, which requires licensees to manage cumulative fatigue by providing workers with a minimum number of days off over the course of a period not to exceed 6 weeks.

B. Stakeholder Reaction to the Fitness for Duty Requirements

On September 3, 2010, the Nuclear Energy Institute (NEI) submitted a

petition for rulemaking (PRM–26–5). In PRM–26–5, the NEI stated that the ''new rule has resulted in consequences not originally envisioned when the rule was developed'' and that ''[t]hese consequences have diminished the safety benefits of the rule.'' The NEI stated that the unintended consequences stem from the minimum days off requirements, specifically § 26.205(d)(3) through § 26.205(d)(6), because they created an undue level of complexity and inflexibility in managing worker fatigue. These regulations mandated a specified minimum average number of days off per week, averaged over a fixed time period. The minimum average number of days off depended on the duties the individual performed and, for § 26.205(d)(3), the length of an individual's shift schedule (*i.e.*, whether the individual was working 8-, 10- or 12-hour shifts).

The NEI requested, among other changes, that 10 CFR Part 26, Subpart I, be amended to replace the minimum days off requirements in § 26.205(d) with a performance-based objective, consisting of an average of 54 hours worked per week, averaged over a calendar quarter. The NEI also proposed changing the § 26.205(e)(1) annual assessment of actual hours worked and performance of individuals subject to the work hour controls to a quarterly assessment to provide a more frequent review of hours worked. The NEI proposed to eliminate the minimum days off requirements in § 26.205(d)(3) through § 26.205(d)(6), while the work hour limits and break requirements in § 26.205(d)(1)(i)–(iii) and (d)(2)(i)–(ii), respectively, would remain unchanged.

Separately from PRM–26–5, on September 23, 2010, the NEI submitted a request for enforcement discretion regarding the minimum days off provisions of 10 CFR Part 26. The request reiterated the NEI's opinion that the regulations that govern fatigue management impeded ''many safety-beneficial practices at plant sites, adversely [impact] the quality of life of covered workers, and [result] in conflicts between rule requirements and represented bargaining unit agreements.'' The letter requested that the NRC ''exercise enforcement discretion from the [minimum days off] provisions of the rule'' until the final disposition of PRM–26–5.

Mr. Erik Erb, a nuclear security officer at the Nine Mile Point Nuclear Station, submitted a petition for rulemaking (PRM–26–6) on August 17, 2010. Mr. Erb requested that the NRC amend 10 CFR Part 26, Subpart I, to decrease the minimum days off requirement for security officers working 12-hour shifts from an average of 3 days per week to an average of 2.5 or 2 days per week. This petition was endorsed by 91 security officers.

C. Public Meetings and Commission Direction

The NRC held a public meeting on November 18, 2010, to learn, directly from the affected stakeholders, more details about the unintended consequences of the minimum days off requirements. Although some of the stakeholders were comfortable with the minimum days off requirements in the 2008 final rule, the stakeholders at this public meeting claimed that the unintended consequences had diminished the safety benefits of the fatigue management provisions of 10 CFR part 26 and expressed the need for an alternative that was simpler and would provide greater scheduling flexibility. Additional public meetings were held on January 6, 2011, and January 25, 2011, to provide opportunities for stakeholders and the NRC staff to discuss alternatives to the minimum days off requirements.

In a February 8, 2011, public meeting, the NRC staff and stakeholders briefed the Commission on the implementation of the 10 CFR Part 26 fatigue management requirements. The nuclear power industry stakeholders conveyed many of the same concerns raised in the three public meetings. The NRC staff presented the scientific and technical bases for the requirements for managing cumulative fatigue and a proposal to address the concerns raised by the industry stakeholders. The NRC staff proposed a maximum average 54-hour work week, averaged over a 6-week rolling period, as an alternative to the § 26.205(d)(3) minimum days off requirements. The NRC staff and industry stakeholders generally agreed that this proposal could provide the relief sought by the industry while meeting the objectives of the minimum days off requirements. Other stakeholders were less certain that the NRC should consider proposals to change the requirements.

On March 24, 2011, the Commission issued a Staff Requirements Memorandum (SRM) that directed the NRC staff to conduct a rulemaking to provide an alternative to the minimum days off requirements that would be consistent with the proposal presented by the NRC staff at the February 8, 2011, briefing. The Commission limited the scope of the rulemaking to the alternative to the minimum days off requirements and instructed the NRC staff to consider the following in a separate rulemaking effort: (1) Other issues related to the petitions for rulemaking, (2) other changes to 10 CFR part 26, and (3) comments received in this rulemaking proceeding that are outside the limited scope of this rulemaking. The Commission also directed the staff to expedite this rulemaking and provide a 30-day public comment period for the proposed rule instead of the typical 75-day public comment period.

On April 25, 2011, consistent with the March 24, 2011, SRM, the NRC revised its Enforcement Policy to include an interim provision allowing licensees enforcement discretion for violations of § 26.205(d)(3) if the licensees implement an alternative approach to the minimum days off requirements (76 FR 22802). This alternative approach limits an individual's number of hours worked to a weekly average of 54 hours, calculated using a rolling window of up to 6 weeks. The enforcement discretion remains in place until the effective date of this final rule.

The NRC held public meetings on April 27, 2011, May 11, 2011, June 1, 2011, and June 23, 2011, to discuss implementation guidance for an alternative to the minimum days off requirements.

On May 16, 2011, consistent with the March 24, 2011, SRM, the NRC published notices that it would consider the issues raised in PRM–26–5 and PRM–26–6 in the planned ''Quality Control/Quality Verification'' rulemaking (Docket ID NRC–2009–0090) (76 FR 28191–28193).

II. Public Input to the Final Rule

The NRC issued a proposed rule on April 26, 2011, to amend 10 CFR Part 26 to provide licensees with an option for managing cumulative fatigue that differed from the minimum days off requirements in § 26.205(d)(3) (76 FR 23208). The proposed rule would have permitted licensees to maintain individuals' work hours at or below a weekly average of 54 work hours, calculated using a rolling period of up to 6 weeks, which would roll by no more than 7 consecutive calendar days at any time. On May 3, 2011, the NRC published a correction in the **Federal Register** to correct a typographical error in a Web site address that had appeared in the proposed rule (76 FR 24831). The public comment period closed on May 26, 2011.

The NRC received submittals from 10 commenters, which included 25 separate comments. Seven of the commenters supported the proposed rule's concept of providing the alternative method of managing

cumulative fatigue that would be simpler and more flexible to implement than the minimum days off requirements. These seven commenters included Mr. Erb, the Union of Concerned Scientists (UCS), and the NEI, with endorsements from Dominion Resources Services, Inc., Entergy Operations, Inc. and Entergy Nuclear Operations, Inc., Arizona Public Service Company (APS), and the Tennessee Valley Authority. Although it supported the comments submitted by the NEI, the APS submitted additional comments concerning implementation of the alternative and minimum days off requirements. Another commenter, Mr. Larry Lawson, a nuclear power plant reactor operator, objected to the proposed rule. Two individuals, Mr. Harry Sloan and Mr. Mark Callahan, provided comments that were primarily outside the limited scope of this rulemaking.

Comments from the UCS indicate that one reason it supports the alternative is that, unlike the minimum days off requirements, the alternative would apply the same requirement to all workers subject to the work hour controls, without regard to their specific duties. The UCS remarked that this approach is supported by science, in contrast to the minimum days off requirements, which apply to individuals based on their duties and the length of their shift schedules.

Notwithstanding that the UCS supports the proposed rule as written, the NRC disagrees with the position in the comment that the minimum days off requirements are not supported by science. The intent of both of the minimum days off and alternative requirements is to manage cumulative fatigue. As explained in section III.A of this document, one method of managing cumulative fatigue is to require that an individual have a minimum number of days off from work. The Statement of Considerations (SOC) for the 2008 10 CFR Part 26 final rule provides the scientific basis for these requirements. The 2008 SOC describes why the number of days off each individual must have depends, in part, on their duties and the length of their shifts.

Another method of managing cumulative fatigue is to limit the number of hours an individual works, which indirectly imposes days off. The alternative provided by this final rule offers this method. This approach provides a level of assurance of the management of cumulative fatigue that is comparable to the minimum days off requirements. Although individuals who perform certain duties, such as security personnel, could work more hours in a 6-week period under the alternative as compared to the minimum days off requirements, the potential for fatigue that could result from the increased hours should be offset by anticipated reductions in fatigue that will result from using an averaging period that advances by one week increments rather than by non-overlapping shift cycles. As noted elsewhere in this document, an averaging period that incrementally advances on a regular basis reduces the potential for front-loading and backloading successive weeks of long work hours. In addition, the alternative provides more flexibility for licensees to manage work hour schedules, thereby reducing the potential for fatigue caused by scheduling constraints. Implementing the alternative also reduces the administrative burden on licensees by having only one set of requirements for all covered workers.

The availability of the alternative does not diminish or call into question the efficacy of the minimum days off requirements. The implementation of either approach provides reasonable assurance that individuals will not be impaired due to cumulative fatigue.

Specific Request for Comments

In the proposed rule's SOC, the NRC sought comments and supporting rationale from the public on the following issue: Would the alternative approach provide assurance of the management of cumulative fatigue comparable to the current minimum days off requirements? Two commenters, Mr. Erb and the UCS, agreed that the alternative requirements would provide assurance that licensees could manage cumulative fatigue at a level that is comparable to the assurance provided by the minimum days off requirements. Mr. Erb also said that the alternative would help to alleviate the unintended consequences caused by the minimum days off requirements.

The NRC agrees with the commenters. As described in section III.A of this document, the alternative provides licensees with a method for managing cumulative fatigue that is different in several ways from the minimum days off requirements but provides a comparable level of assurance that covered workers will not be impaired from cumulative fatigue due to their work schedules. The alternative also should eliminate the unintended consequences of the minimum days off requirements by offering a simpler method for computing work hours and allowing licensees to be more flexible in how they schedule individuals' work hours.

Although Mr. Lawson did not directly respond to the question presented in the proposed rule's SOC, he stated that the alternative would ease the minimum days off restrictions and increase fatigue.

The NRC disagrees that the alternative would relax the cumulative fatigue management requirements. For the reasons given in section III.A of this document, the NRC has determined that the alternative approach provides assurance of the management of cumulative fatigue that is comparable to assurance provided by the minimum days off requirements.

Other commenters did not address this specific request for comment.

Suggested Changes to the Proposed Rule

The NEI stated that the proposed rule language uses the terms ''rolling period'' and ''rolling window'' interchangeably, and the SOC for the proposed rule also uses the term ''averaging period,'' when referring to the 6-week maximum period over which the 54-hour per week average is to be calculated. The NEI suggested that the NRC use only the term ''averaging period.''

The NRC agrees with the NEI that the terms are used interchangeably throughout the proposed rule's SOC but notes that the proposed rule language uses ''averaging period'' and ''rolling period.'' The NRC agrees that, to ensure clarity, one term should be used when referring to the 6-week maximum period over which the 54-hour per week average is to be calculated. That term is ''averaging period.'' The term ''incremental period'' is used in this document to describe the amount of time by which a licensee rolls forward, or incrementally advances, its averaging periods.

The NEI also recommended that the following words in proposed § 26.205(d)(7)(i) be removed: ''which rolls by no more than 7 consecutive calendar days at any time.'' The NEI contended that those words add a new requirement that (1) Was not discussed at the February 8, 2011, Commission briefing; (2) is not based on the technical and regulatory analysis performed by the NRC staff; (3) is inconsistent with the minimum days off requirements and its associated guidance, neither of which stipulates the duration of the rolling increment; and (4) would be outside the scope of the March 24, 2011, SRM. According to the NEI, this proposed rule language would result in an unintended consequence of preventing the rolling periods from being matched to the licensee's payroll schedules, thereby possibly resulting in rolling schedules

that are different for each individual worker and unwarranted complexity.

The NRC agrees in part and disagrees in part with the NEI comments. The words, ''which rolls by no more than 7 consecutive calendar days at any time,'' in proposed § 26.205(d)(7)(i), were not discussed at the February 8, 2011, Commission briefing. However, as noted by the NEI, the NRC and stakeholders discussed at public meetings how the averaging periods could be advanced on a weekly basis. The intent of the rule language in question was to establish the minimum and maximum periods by which a licensee could advance an averaging period. Thus, a licensee could advance its averaging period by as little as one day but by no more than one week, or 7 consecutive calendar days. Although licensees at the public meetings may have talked about advancing their averaging periods on a weekly basis, the NRC did not want to limit licensees' flexibility by requiring 1-week incremental periods.

More importantly, without having an upper limit on the length of the incremental period, licensees could advance their averaging periods on a 6-week basis, resulting in fixed 6-week schedules. An approach requiring a maximum weekly average of 54 work hours using fixed averaging schedules would allow more consecutive weeks of high levels of work hours than using averaging schedules that incrementally advance on a regular basis. Under the former type of schedule, a licensee could back-load one fixed schedule with long work hour weeks and front-load the next fixed schedule with long work hour weeks, resulting in several consecutive excessive work hour weeks and potentially cumulatively-fatigued individuals. The latter type of schedule limits the number of hours that can be worked in consecutive weeks because each week's hours affect the number of hours worked in the other weeks in the averaging period. By advancing the averaging period on a consistent basis, licensees must consider the impact of each week's work hours before and after each incremental advance. The use of fixed averaging schedules also would be inconsistent with the incrementally advancing averaging period concept considered in the NRC regulatory basis and with the NRC staff's statements to the Commission at the February 8, 2011, briefing. *See, e.g.*, Transcript of February 8, 2011, Commission Briefing on the Implementation of Part 26, p. 89, lines 4–9.

The NRC agrees with the NEI that use of an incremental period that is shorter than 7 days could introduce unintended complexity to the implementation of the alternative. In some cases, such as when an averaging period ends 4 days before a unit outage is scheduled to begin, the licensee cannot advance the averaging period by a full incremental period of 7 days. The proposed rule would have required the use of an incremental period of less than 7 days. The NRC is revising the rule language to eliminate the requirement to advance an averaging period by fewer than 7 calendar days. The final rule requires licensees to advance averaging periods on a 7-day (*i.e.*, weekly) basis to preclude scheduling consecutive, excessively long work weeks without proper restorative rest. Thus, in a 6-week averaging period, once the averaging period has begun advancing, the incremental period will be 1 week long and will always be the sixth week of that averaging period. Also, in association with this final rule, the NRC is endorsing implementation guidance that includes an acceptable method for addressing averaging periods and incremental periods of less than 7 days in duration.

The NEI identified another unintended consequence of the words, ''which rolls by no more than 7 consecutive calendar days at any time,'' in proposed § 26.205(d)(7)(i). The definition of a day off contained in § 26.205(d)(3) states that a day off is a calendar day in which an individual does not start a work shift. For many licensees, this definition is used in computer software to count the work hours of a shift that begins at the end of a calendar day but ends during the next calendar day, as hours worked on the day the shift started as opposed to splitting the hours between the two days. The NEI claimed that the NRC's interpretation of this proposed rule language, as expressed at the May 11, 2011, public meeting, would impact this practice and cause an unnecessary change to the industry software.

The NRC agrees with the NEI's comment. At the May 11, 2011, public meeting, the NRC explained that when a shift begins near the end of a calendar day that also happens to be the last day of an averaging period, but that shift ends during the next calendar day (and, thus, the next averaging period), the proposed rule would have required licensees to: (1) Count the hours worked on the calendar day that was the end of the averaging period as hours worked during that averaging period; and (2) count the hours worked during that same shift but on the next calendar day as hours worked during the next averaging period. The NRC has added language to the final rule to clarify that when a shift starts at the end of a calendar day and concludes during the next calendar day, a licensee will have the option to consider the hours worked during that shift as if they were all worked on the day the shift started or count the hours on the calendar days the hours were actually worked. The licensee must choose only one option. Because the number of hours worked in an averaging period is averaged on a weekly incremental basis, hours counted in one averaging period instead of the next averaging period will still be taken into account in the weekly averaging calculation. In addition, this structure will not force upon licensees an undue burden of using a method for counting hours that is different from the way licensees currently count hours to determine a day off to comply with minimum days off requirements.

The NEI also commented that in the fourth paragraph in section III.C of the proposed rule's SOC, which includes a discussion of the force-on-force tactical exercise exception, the last sentence is inconsistent with the proposed rule language and the 2008 final rule. The NEI suggested that the paragraph should be revised to read: ''exclude from the § 26.205(d)(7) calculations the shifts worked'' instead of ''exclude from the § 26.205(d)(7) calculations the hours worked.''

The NRC disagrees with this comment. The proposed rule would have allowed licensees to exclude the *hours* worked during a force-on-force exercise because the calculation of average hours worked per week is computed by dividing the number of hours worked during the averaging period by the number of weeks in the averaging period. So, when the licensee excludes the shifts worked during an NRC-evaluated force-on-force tactical exercise, it is actually excluding the hours in the shifts when calculating the individual's number of hours worked. No change was made to the SOC or rule language as a result of this comment.

The last paragraph in section III.C of the proposed rule's SOC addresses the applicability of EGM–09–008, ''Enforcement Guidance Memorandum—Dispositioning Violations of NRC Requirements for Work Hour Controls Before and Immediately After a Hurricane Emergency Declaration,'' dated September 24, 2009, to the proposed maximum average work hours alternative. The NEI requests that this paragraph include an explanation of whether licensees with exemptions from the minimum days off requirements could rely on those existing exemptions if they choose to adopt the maximum average work hours alternative.

The NRC agrees that the paragraph in question could benefit from further clarity. A licensee that has already been granted an exemption from § 26.205(d) before and immediately after a hurricane emergency declaration can rely on that exemption if it implements the requirements in the new § 26.205(d)(7). The final rule's SOC is also revised to provide further explanation of the conditions that must exist before the NRC staff may exercise enforcement discretion under EGM–09–008.

The NEI contends that the second sentence in proposed § 26.205(d)(7) is not necessary. That sentence reads: ''Licensees voluntarily choosing to comply with the alternative maximum average work hours requirements in this paragraph are not relieved from complying with all other requirements in § 26.205 other than § 26.205(d)(3).'' The NEI argues that there is nothing stated or implied in § 26.205(d)(7) that would lead one to conclude that § 26.205(d)(7) provides any relief from complying with all other requirements in § 26.205 other than those in § 26.205(d)(3).

The NRC agrees with the NEI's comment and has deleted the second sentence of § 26.205(d)(7) in the final rule, because it is unnecessary.

The APS commented that although the NRC analysis of the proposed alternative relied on a licensee's implementation of only the alternative for all covered workers, the proposed rule language does not prohibit implementation of both the minimum days off and alternative requirements at one site. The APS claimed that plant procedures and management tools have the capacity to implement either cumulative fatigue management approach. Because both methods are effective in controlling cumulative fatigue, the APS argued that licensees should be able to select the method that works best for a given covered work group. It also claimed that at the Palo Verde Nuclear Generating Station, not allowing split implementation may have the effect of delaying restoration of longstanding safety beneficial practices by approximately one year.

The NRC disagrees that the proposed rule language did not prohibit implementation of both the minimum days off and alternative requirements at one site. The APS pointed to the following language in proposed § 26.205(d)(3) to support its argument: ''Licensees shall e*ither* ensure that *individuals have*, at a minimum, the number of days off specified in this paragraph, *or* comply with the requirements for maximum average work hours in § 26.205(d)(7)'' (italics added by the APS). The NRC intends that sentence to convey that licensees shall either: (1) ensure that individuals have, at a minimum, the number of days off specified in § 26.205(d)(3) (i.e., the licensee shall comply with the minimum days off requirements in § 26.205(d)(3)); or (2) comply with the requirements for maximum average work hours in § 26.205(d)(7). This reading of proposed § 26.205(d)(3), which focuses on the licensee's obligations, is consistent with the language of proposed § 26.205(d)(7)(ii), which reads as follows: ''Each licensee shall state, in its FFD policy and procedures required by § 26.27 and § 26.203(a) and (b), with which requirements the licensee is complying: the minimum days off requirements in § 26.205(d)(3) or maximum average work hours requirements in § 26.205(d)(7).'' In both provisions, the licensee must choose which set of requirements it intends to follow. Thus, the proposed rule language clearly reflected the NRC's position that each licensee must implement only one method of managing cumulative fatigue for all of its covered workers: either the minimum days off requirements or the alternative requirements. A reading of the proposed rule language would have been consistent with the interpretation in the APS's comment if the word ''either'' had immediately followed ''individuals'' in the first sentence of § 26.205(d)(3), so that it read: ''Licensees shall ensure that individuals either have, at a minimum, the number of days off specified in this paragraph, or comply with the requirements for maximum average work hours in § 26.205(d)(7).''

However, the NRC is clarifying the rule language to ensure that all licensees document, in their FFD policies and procedures, the set of requirements with which they will comply, without regard to whether they comply with the minimum days off or the alternative requirements. The proposed rule could have been read to require licensees to document their election only if they implemented the alternative. This change to the final rule results from the APS comment.

The NRC also disagrees that a licensee should be able to implement the minimum days off requirements and the alternative requirements simultaneously for different covered groups, even for less than one year. The NRC's determination that the proposed alternative is equivalent to the minimum days off requirements considered the collective advantages and disadvantages of having all individuals who are subject to the work hour controls under a single set of cumulative fatigue management requirements. Allowing licensees to implement the minimum days off and alternative requirements simultaneously would also create an undue burden for NRC inspectors and undue cost and burden for licensees. Moreover, during the public meetings and Commission briefing before the issuance of the proposed rule and in the request for enforcement discretion, industry stakeholders consistently requested swift relief from the minimum days off requirements for all covered workers. The industry stakeholders did not request relief from the minimum days off requirements for only certain covered groups of workers. By this final rule, which was produced on an expedited basis due to the compelling industry stakeholder needs, the NRC is providing an alternative to the minimum days off requirements for all covered workers. No change was made to the final rule as a result of this comment.

Opposition to the Proposed Rule

Mr. Lawson asserted that the work hour controls were issued to encourage licensees to adequately staff their plants, thereby reducing the effects of cumulative fatigue on plant operations. He stated that licensees have not hired more workers and won't hire more workers unless it is financially beneficial to do so. He argued that the proposed rule would provide relief from the work hour controls, thus removing any incentive for licensees to increase staffing.

The NRC disagrees with Mr. Lawson. The work hour controls were issued in 2008 to ensure against worker fatigue adversely affecting public health and safety and the common defense and security by establishing clear and enforceable requirements for the management of worker fatigue. The NRC requires that licensees comply with the requirements but does not direct licensees to satisfy these requirements by any particular means, such as by hiring more workers. Further, as stated in the SOC for this final rule, the alternative provides reasonable assurance of the management of cumulative fatigue that is comparable to the assurance provided by the minimum days off requirements. In doing so, the alternative does not provide relief from or relaxation of the minimum days off requirements. No change was made to the final rule as a result of this comment. Mr. Lawson also maintained that, as demonstrated by this rulemaking and the shortened public

comment period, the NRC seems willing to give the industry whatever it wants. The NRC disagrees with this comment. At the November 18, 2010, public meeting, more than 20 individuals, representing maintenance, operations, and security workers, unions, and vendors, spoke of the unintended consequences of the minimum days off requirements. These stakeholders emphasized the industry's inability to continue practices that licensees consider beneficial, such as promoting continuity in work crew staffing and the continued development of licensee staff. The industry representatives further stated that the hours available for work are sufficient in almost all cases; however, they believe there should be more flexibility in how the time can be used to help improve workers' quality of life and lessen the complexity of the rule. The Commission directed the staff to develop the proposed rule based on the following: (1) Feedback from industry representatives; (2) information presented by two petitioners for rulemaking seeking changes to the work hour controls in 10 CFR 26.205; (3) NEI's request for enforcement discretion of those same regulatory provisions in 10 CFR 26.205; (4) evidence gathered from stakeholders at public meetings and the February 8, 2011, Commission briefing; and (5) analysis performed by the NRC staff and explained in memoranda to the Commission dated January 4, 2011, and February 28, 2011. The NRC also held three public meetings and one public briefing to the Commission on this issue between November 2010 and March 2011, thereby offering stakeholders several opportunities to provide their input. Taken together, all of this information provided the Commission with a reasonable basis to support its decision to issue the proposed rule and establish a 30-day comment period instead of the typical 75-day public comment period. No change was made to the final rule as a result of this comment.

Mr. Lawson contended that the alternative would allow licensees to give covered workers only one day off every 17 days, which, he said, the NRC admits could lead to fatigue. Nevertheless, the NRC proposed to permit this alternative. Mr. Lawson claimed that a violation of the alternative approach would result in either a ''minor or non-cited violation,'' which would not be much of ''a deterrent to the type of abuse we had during [the period when the only industry-wide direction was based on Generic Letter 82–12, 'Nuclear Power Plant Staff Working Hours'].''

The NRC agrees in part and disagrees in part with Mr. Lawson's comments. The alternative allows licensees to create work schedules that could result in cumulative fatigue. The industry representatives at the February 8, 2011, Commission briefing illustrated this point with an example of a schedule of four consecutive weeks of 72-hour work weeks, the most hours a licensee can schedule in a 7-day period under the work hour controls. *See* Transcript of February 8, 2011, Commission Briefing on the Implementation of Part 26, p. 52, lines 16–18. However, the industry representatives explained that such a schedule would not be possible because, in part, shifts would be unmanned. Id. at lines 18–20 and p. 54, lines 10–13. For instance, an individual who is scheduled to work four consecutive 72-hour work weeks would also need two weeks of zero work hours during the 6-week averaging periods containing the four weeks of 72-hour work weeks. Such a schedule would be improbable for licensees to maintain because plants cannot operate without proper staffing. Id.

A schedule that provides an individual only 1 day off in 17 consecutive days under the alternative approach could result in cumulative fatigue. However, to limit an individual's number of days off to one in a 17-day period and still meet the 54-hour maximum weekly average, a licensee could not schedule an excessive number of work hours every week in the averaging periods containing that 17-day period. The NRC is also endorsing implementation guidance for licensees that summarizes this concern and reiterates each licensee's obligation to schedule work hours of covered workers consistent with the objective of preventing impairment from fatigue due to the duration, frequency, or sequencing of successive shifts as required by 10 CFR 26.205(c). Therefore, with the inherent self-limiting nature of a maximum weekly work hour average schedule, the use of regularly-repeating standard shift schedules by most licensees, site procedures that reinforce the requirement to effectively manage fatigue, and the other work hour controls in § 26.205(d)(1) and (d)(2), the risk of cumulative fatigue is low under the schedule posited by Mr. Lawson. No change was made to the final rule as a result of this comment.

Concerning Mr. Lawson's comment comparing the alternative approach to the work hour controls that existed before the 2008 final rule, the NRC has examined the enforceability of the previous regulatory framework applicable to worker fatigue, which included the non-legally-binding Generic Letter 82–12. As explained in the 2008 final rule's SOC, the broad and nonprescriptive provisions of the pre-2008 10 CFR part 26 and the technical specifications and license conditions pertaining to fatigue that existed at that time lacked clearly defined terms or measures of fatigue. This regulatory structure made it difficult for the NRC to enforce worker fatigue requirements and work hour limits in an effective, efficient, and uniform manner that would ensure that all licensees provided reasonable assurance that workers were able to safely and competently perform their duties. In contrast to that framework, the 2008 final rule established fatigue management program requirements that can be readily and consistently enforced. This final rule does not detract from that program but rather provides an optional means to achieve the goal of providing reasonable assurance of the management of cumulative fatigue. No change was made to the final rule as a result of this comment.

Other Comments Within the Scope of the Rulemaking

The UCS suggested that workers on 12-hour shifts would be restricted to working alternating 5-day (60 hours per week) and 4-day (48 hours per week) work weeks to adhere to the 54-hour average limit. The NRC disagrees that such a schedule would be the only permissible schedule under the alternative. For example, licensees could arrange a 6-week schedule of 72 hours, 72 hours, 60 hours, 48 hours, 36 hours, and 36 hours, which would average 54 hours per week and also meet the work hour controls in § 26.205(d)(1) and (d)(2). No change was made to the final rule as a result of this comment.

The UCS commented that the proposed revision to § 26.205(d)(4) would require licensees to follow the minimum days off requirements during outages lasting longer than 60 days, even if they applied the alternative approach before and during the outage. The NRC does not agree that the proposed rule would have required these licensees to meet the minimum days off requirements following the first 60 days of a unit outage. Individuals subject to the minimum days off requirements before a unit outage are subject to those same requirements after the first 60 days of the outage, unless § 26.205(d)(6) applies. Under the proposed and final rules, licensees who use the maximum average work hours provisions before an outage must follow

those requirements after the first 60 days of the outage, unless § 26.205(d)(6) applies. The amendment to § 26.205(d)(4) allows licensees who use the maximum average work hours provisions before an outage to use those requirements during the outage too. A similar option is and has been available to licensees implementing the minimum days off requirements. Amended § 26.205(d)(4) does not change licensees' obligations after the first 60 days of an outage. No change was made to the final rule as a result of this comment.

Comments Beyond the Scope of the Rulemaking

Mr. Sloan remarked that some duties do not require constant surveillance, so the individuals performing these duties should not be subject to the fatigue management requirements. He also commented that it is more important to have a qualified person performing a task than it is to ensure that the person performing the task complies with the work hour controls. Mr. Sloan also believes that the rule is too complex and does not guarantee that an individual subject to the work hour requirements will diligently perform their duties.

The NRC considers Mr. Sloan's comments to be beyond the limited scope of the proposed and final rules. Mr. Sloan's comments concern the overall concept of the 10 CFR part 26 work hour controls. As directed by the Commission in the March 24, 2011, SRM, the NRC will consider these comments in a separate rulemaking effort, which the NRC has identified as the Quality Control/Quality Verification rulemaking. No change was made to the final rule as a result of these comments.

Mr. Callahan claimed that the 10 CFR part 26 work hour controls do not reduce worker fatigue but can increase fatigue during outages. Specifically, he noted that when an individual works a backshift schedule, taking a 1-day break disrupts that person's sleep pattern. Recovery from this disruption takes several days, thus inducing fatigue. Mr. Callahan concluded that once a person adjusts to the unnatural sleep pattern (e.g., nightshift), it is far better to continue that pattern for the duration of an outage. He also stated that the current rule has caused a drop in his earnings.

The NRC considers Mr. Callahan's comments to be beyond the limited scope of the proposed and final rules. Mr. Callahan's comments concern the overall concept of the 10 CFR part 26 work hour controls. As directed by the Commission in the March 24, 2011, SRM, the NRC will consider these comments in a separate rulemaking effort, which the NRC has identified as the Quality Control/Quality Verification rulemaking. No change was made to the final rule as a result of these comments.

III. Description of the Final Rule

A. Maximum Weekly Average of 54 Hours Worked Over a 6-Week Averaging Period That Advances on a Weekly Basis

One cause of cumulative fatigue is consecutive days of restricted or poor quality sleep. In turn, consecutive days of restricted or poor quality sleep may be caused by such things as shift-work, extended work days, and extended work weeks. Former Subpart I of 10 CFR part 26 offered nuclear power plant licensees only one primary method to manage cumulative fatigue: provide individuals with a minimum number of days off over the course of a period not to exceed 6 weeks. The distribution of the days off during the 6-week period acts to either prevent or mitigate cumulative fatigue.

An alternative method for managing cumulative fatigue is to establish a requirement to limit actual hours worked instead of mandating the number of days off which individuals must have. A limit on actual hours worked, when applied to schedules that require regular shift coverage, limits the number of work hours that can contribute to cumulative fatigue and, as a practical matter, results in periodic days off for recovery rest. A schedule resulting in a weekly average of 54 hours worked, calculated using an averaging period of up to 6 weeks that incrementally advances on a consistent basis, is such a schedule.

In general, most individuals that work their normal shift schedule and receive only the minimum number of days off required under the minimum days off requirements of § 26.205(d)(3) could average as many as 54 hours of work per week. However, the NEI indicated that implementation of the minimum days off requirements reduced licensee scheduling flexibility and imposed a substantial administrative burden. By comparison, limiting work hours to an average of not more than 54 hours per week by using an averaging period of up to 6 weeks with 7-day incremental periods limits the number of consecutive weeks of extended work hours that an individual can work by using a comparable but simpler and more flexible requirement. The 6-week limit also remains consistent with the averaging duration and technical basis of the minimum days off requirements, as described in the SOC for the 2008 10 CFR part 26 final rule. In addition, this alternative does not depend on the length of an individual's shift schedule. The alternative eliminates for licensees and individuals the burden of tracking the number of days off that an individual receives in a period not to exceed 6 weeks. Based on stakeholder input, the alternative will relieve operational burdens by enabling licensee personnel to engage in certain safety-beneficial practices with fewer scheduling restrictions, such as holding off-shift shift manager meetings and using the most knowledgeable workers in responding to plant events and conditions. The flexibility provided by the alternative also could improve individuals' quality of life by allowing more flexibility in the way that individuals use their time when they are not working.

Use of 7-day incremental periods will provide reasonable assurance that licensees will not schedule several consecutive weeks of high levels of work hours and will not introduce unintended complexity to the implementation of the alternative. An upper limit on the length of the incremental period of 7 days prevents licensees from establishing fixed 5- or 6-week schedules. Those schedules permit licensees to back-load one fixed schedule with long work hour weeks and front-load the next fixed schedule with long work hour weeks, resulting in several consecutive weeks of long work hours and the potential for individuals to experience cumulative fatigue. Requiring licensees to advance their averaging periods on a 7-day basis limits the number of hours that can be worked in consecutive weeks because each week's hours affect the number of hours that can be worked in the other weeks in the averaging period. By advancing the averaging period on a consistent basis, licensees must consider the impact of each week's work hours before and after each incremental advance.

In summary, the maximum number of hours that can be worked under the alternative approach is comparable to the maximum number of hours that can be worked by most individuals under the 10 CFR part 26 minimum days off requirements, except that the alternative requirement provides greater simplicity and flexibility. Although the schedule required under the alternative approach limits the number of consecutive extended work weeks and thereby limits the potential for cumulative fatigue, there are unusual potential circumstances in which the alternative requirement could be met and the schedule could be fatiguing. Such schedules include having only one in every nine days off or consistently

working the maximum allowable hours, which would likely result in cumulative fatigue. However, the industry has stated that these unusual schedules are improbable. The NRC concludes that this alternative approach, together with other aspects of the rule that remain unchanged, provide reasonable assurance that licensees will manage cumulative fatigue in a manner that contributes to the protection of public health and safety and common defense and security.

B. Alternative to the Minimum Days Off Requirements

The NRC is creating a new § 26.205(d)(7) that contains the alternative method for managing cumulative fatigue. This final rule allows nuclear power plant licensees and other entities identified in § 26.3(a) and, if applicable, (c) and (d) to choose whether or not to implement this alternative approach, in lieu of compliance with the minimum days off requirements in § 26.205(d)(3). The NRC is not removing the § 26.205(d)(3) minimum days off requirements and mandating that all licensees instead adopt new maximum average work hours requirements. Some licensees may be satisfied with the minimum days off requirements. In addition, a mandated change would constitute backfitting under the NRC's Backfit Rule, 10 CFR 50.109. None of the exceptions in § 50.109(a)(4) to the requirement to prepare a backfit analysis could be justified, and a backfit analysis could not demonstrate that a mandatory rule would constitute a cost-justified substantial increase in protection to public health and safety or common defense and security. For these reasons, the NRC has decided to add the maximum weekly average of 54 work hours, averaged over a period of up to 6 weeks that advances every 7 days, as an alternative to the minimum days off requirements.

C. Applicability

The alternative in this final rule can be used only in place of the minimum days off requirements in § 26.205(d)(3) and is applicable only to individuals subject to work hour controls under § 26.205(a). Under § 26.205(a), the subject individuals are those described in § 26.4(a). The NRC's determination that the proposed alternative is equivalent to the minimum days off requirements considered the collective advantages and disadvantages of having all individuals who are subject to the work hour controls under a single set of cumulative fatigue management requirements. Thus, licensees are not able to subject one group of individuals under § 26.4(a) to the minimum days off requirements in § 26.205(d)(3) and another group of individuals under § 26.4(a) to new § 26.205(d)(7) requirements. Licensees must select only one option. This choice establishes the legally-binding requirement for that licensee for all individuals subject to the work hour controls of § 26.205.

Allowing licensees to implement the minimum days off and alternative requirements simultaneously would also create an undue burden for NRC inspectors and undue cost and burden for licensees. Having different workers subject to different requirements would make inspections more burdensome because of the amount of administrative time that would be necessary for NRC inspectors to prepare for and conduct an inspection. Taking this extra time would reduce the amount of available time for inspectors to conduct risk-informed inspections. Furthermore, licensees implementing both options would incur additional costs associated with having two processes and two training programs to implement the options and increased burden in managing individuals on a work shift who are subject to different work-hour requirements. This scheduling challenge would also diminish the industry's desire to have scheduling flexibility that enables safety-beneficial practices such as shift manager meetings and just-in-time training. These were the types of safety-beneficial practices that were curtailed as a result of the inflexibility of the minimum days off requirements.

Consistent with the minimum days off requirements in § 26.205(d)(3), the alternative maximum average work hours provisions apply to all periods of operations, with several specified exceptions: (1) During force-on-force exercises; (2) during plant emergencies; and (3) for security personnel when they are needed to maintain the common defense and security. In those limited circumstances, special provisions, described in section IV. of this document, apply. In addition, licensees had the option under former § 26.205(d)(4) to comply with the minimum days off requirements in either § 26.205(d)(3) or (d)(4) during unit outages when the affected individuals are working on outage activities. Licensees also had the option under former § 26.205(d)(5) to comply with the minimum days off requirements in either § 26.205(d)(3) or (d)(5) during unit outages, security system outages, or increased threat conditions. Under the final rule, licensees also have the option to comply with the maximum average work hours requirements under the above conditions. The SOC for the 2008 10 CFR part 26 final rule explained the reasons why the Commission permits the exceptions and options involving the minimum days off requirements. The approach set forth in this final rule offers licensees an alternative to the minimum days off requirements that is equally effective at managing cumulative fatigue. Therefore, the SOC for the 2008 10 CFR Part 26 final rule also provides the justification for why the alternative applies to the exceptions and options described in section IV. of this document.

The NRC's Office of Enforcement issued EGM–09–008, ''Enforcement Guidance Memorandum—Dispositioning Violations of NRC Requirements for Work Hour Controls Before and Immediately After a Hurricane Emergency Declaration,'' on September 24, 2009. The EGM–09–008 gives the NRC staff guidance for processing violations of work hour controls requirements during conditions before and immediately after the declaration of an emergency for a hurricane, when licensees sequester plant staff on site to ensure personnel are available for relief of duties, and potentially granting enforcement discretion for the affected requirements. Under EGM–09–008, the NRC may exercise enforcement discretion for violations of 10 CFR 26.205(c) and (d) while a licensee sequesters site personnel in preparation for hurricane conditions that are expected to result in the declaration of an emergency caused by high winds and immediately after the licensee has exited the emergency declaration. The licensee must meet certain conditions, including having site-specific procedural guidance that specifies the conditions necessary to sequester site personnel, and having requested an exemption from 10 CFR 26.205(c) and (d), or any part thereof, to allow for sequestering site personnel before and immediately after a hurricane. If the licensee must sequester before an exemption has been submitted, then the licensee must agree, in writing, to request the exemption no later than 6 months before the onset of the next hurricane season, as established by the National Oceanic and Atmospheric Administration's National Hurricane Center. The EGM–09–008 refers to § 26.205(d) generally, and therefore, the requirements in § 26.205(d)(7) also fall under the enforcement discretion described by EGM–09–008. Also, licensees who, before the effective date of this final rule, were granted exemptions from

§ 26.205(d) before and immediately after a hurricane emergency declaration can rely on that exemption if they implement the requirements in § 26.205(d)(7).

IV. Section-by-Section Analysis

10 CFR 26.203 General Provisions

Section 26.203 establishes requirements for licensees' fatigue management policies, procedures, training, examinations, recordkeeping, and reporting. The NRC is making conforming changes to paragraphs within § 26.203 to ensure consistency between the implementation of the minimum days off requirements in § 26.205(d)(3) and the implementation of the maximum average work hours requirements in § 26.205(d)(7).

Section 26.203(d)(2)

Section 26.203(d)(2) requires licensees to retain records of shift schedules and shift cycles of individuals who are subject to the work hour requirements established in § 26.205. These records are necessary, in part, to ensure that documentation of the licensee's fatigue management program is retained and available for the NRC inspectors to verify that licensees are complying with the work hour requirements and waiver and fatigue assessment provisions. Licensees that implement the alternative must be able to demonstrate that individuals subject to the new work hour controls have not exceeded the average weekly work hours limit; therefore, inspectors need to know the averaging periods used by the licensee. The NRC is amending § 26.203(d)(2) to include the requirement that licensees implementing the requirements in § 26.205(d)(7) maintain records showing the beginning and end times and dates of all 6-week or shorter averaging periods. These licensees must also retain records of shift schedules to ensure compliance with the requirements in § 26.205(c) and (d)(2).

Section 26.203(e)(1)

The former § 26.203(e)(1) required licensees to provide the NRC with an annual summary of all instances during the previous calendar year in which the licensee waived each of the work hour controls specified in § 26.205(d)(1) through (d)(5)(i) for individuals who perform the duties listed in § 26.4(a)(1) through (a)(5). The NRC is revising § 26.203(e)(1) to require licensees to also report the instances when the licensee waived the requirements in § 26.205(d)(7).

Section 26.203(e)(1)(i) and (e)(1)(ii)

Section 26.203(e)(1)(i) and (e)(1)(ii) requires licensees to report whether work hour controls are waived for individuals working on normal plant operations or working on outage activities. The final rule requires licensees to include whether the alternative requirements in § 26.205(d)(7) were waived during normal plant operations or while working on outage activities.

10 CFR 26.205 Work Hours

Section 26.205 sets forth the NRC's requirements governing work hour controls applicable to individuals performing the duties in 10 CFR 26.4(a)(1) through (a)(5). The NRC is adding new § 26.205(d)(7) and (d)(8) and making conforming changes to paragraphs within § 26.205 to ensure consistency between the implementation of the minimum days off requirements in § 26.205(d)(3) and the implementation of the maximum average work hours requirements in § 26.205(d)(7).

Section 26.205(b)(5)

Section 26.205(b)(5) allows licensees to exclude from the calculation of an individual's work hours unscheduled work performed off site (e.g., technical assistance provided by telephone from an individual's home), provided the total duration of the work does not exceed a nominal 30 minutes during any single break period. For the purposes of compliance with the minimum break requirements of § 26.205(d)(2) and the minimum days off requirements of § 26.205(d)(3) through (d)(5), such duties do not constitute work periods or work shifts. The NRC is revising § 26.205(b)(5) to exclude these incidental duties from hours worked under § 26.205(d)(7).

Section 26.205(d)(3)

The former § 26.205(d)(3) required licensees to ensure that subject individuals have, at minimum, the days off as specified in this section. Under the final rule, licensees have the option of either complying with the minimum days off requirements in § 26.205(d)(3) or the alternative requirements in § 26.205(d)(7).

Section 26.205(d)(4)

Section 26.205(d)(4) provides a limited discretionary exception from the minimum days off requirements in § 26.205(d)(3) for individuals performing the duties specified in § 26.4(a)(1) through (a)(4) (i.e., certain operations, chemistry, health physics, fire brigade, and maintenance activities). The exception from the minimum days off requirements is available during the first 60 days of a unit outage while a subject individual is working on outage activities. In these circumstances, licensees are not required to calculate the requisite number of an individual's days off by a weekly average over a period of up to 6 weeks. Instead, if the licensee elects to apply the exception, § 26.205(d)(4) requires licensees to ensure that individuals specified in § 26.4(a)(1) through (a)(3) have a minimum of 3 days off in each successive (i.e., non-rolling) 15-day period and that individuals specified in § 26.4(a)(4) have at least 1 day off in any 7-day period. Detailed guidance on the applicability of this rule provision is available in Regulatory Guide 5.73, ''Fatigue Management for Nuclear Power Plant Personnel.'' After the first 60 days of a unit outage, regardless of whether the individual is working on unit outage activities, the individual is again subject to the minimum days off requirements of § 26.205(d)(3), except as permitted by § 26.205(d)(6). The NRC is revising § 26.205(d)(4) to allow licensees that implement the maximum average work hours alternative before and after an outage to have the option to use the alternative or the fixed number of days off approach during the first 60 days of a unit outage.

Section 26.205(d)(5)(i)

Section 26.205(d)(5)(i) provides a discretionary exception from the minimum days off requirements of § 26.205(d)(3) for personnel performing the duties described in § 26.4(a)(5) during unit outages or planned security system outages. The requirement limits this exception period to 60 days from the beginning of the outage and requires that individuals performing the security duties identified in § 26.4(a)(5) during this period have a minimum of 4 days off in each non-rolling 15-day period. Amended § 26.205(d)(5)(i) allows licensees that implement the maximum average work hours alternative before and after an outage to have the option to use the alternative or the fixed number of days off approach in § 26.205(d)(5)(i) for security personnel during the first 60 days of a unit outage or planned security system outage.

Section 26.205(d)(5)(ii)

Section 26.205(d)(5)(ii) provides a discretionary exception from the minimum days off requirements of § 26.205(d)(3) and (d)(5)(i) for security personnel during the first 60 days of an unplanned security system outage or an increased threat condition. Individuals

performing the security duties identified in § 26.4(a)(5) during this period do not have to meet the minimum days off requirements of § 26.205(d)(3) or (d)(5)(i). The NRC is revising § 26.205(d)(5)(ii) to provide that, during the first 60 days of an unplanned security system outage or an increased threat condition, licensees would not need to meet the requirements of § 26.205(d)(3), (d)(5)(i), or (d)(7) for security personnel.

Section 26.205(d)(7)

The NRC is including a new section in 10 CFR Part 26 governing maximum average work hours for subject individuals, which licensees can implement as an alternative to comparable provisions in § 26.205(d)(3). Licensees who choose to implement this alternative must nonetheless comply with all requirements in § 26.205 other than the minimum days off requirements in § 26.205(d)(3).

The individuals subject to the maximum average work hours requirements in this section are the same as the individuals subject to the comparable controls in § 26.205(d)(3), which, according to § 26.205(a), are the individuals described in § 26.4(a). Unlike the minimum days off requirements, the maximum average work hours alternative establishes a uniform requirement for all individuals described in § 26.205(a) without regard for their assigned duties or the lengths of their shift schedules.

Section 26.205(d)(7)(i)

Licensees who elect to implement the requirements of § 26.205(d)(7)(i) must manage affected individuals' cumulative fatigue by limiting the number of hours they work each week to an average of 54 hours. The 54-hour average is computed over an averaging period of up to 6 weeks. As an averaging period ends, a licensee advances (i.e., adjusts forward) the beginning and end times and dates of the averaging periods by 7 consecutive calendar days. Licensees must describe in their FFD procedures, as required by new § 26.205(d)(8), the beginning and end times and days of the week for the averaging periods.

Section 26.205(d)(7)(ii)

Licensees implementing the maximum average work hours requirements in § 26.205(d)(7)(i) have an option under new § 26.205(d)(7)(ii) regarding how they count work hours, for purposes of computing an individual's average number of work hours, during an individual's overnight work shift. When a shift begins near the end of a calendar day and concludes during the next calendar day, licensees can treat the hours worked during that shift as if the hours were all worked on the day the shift started, or licensees can attribute the hours of the shift to the calendar days on which the hours were actually worked. For example, if an individual begins her 10-hour shift at 8 p.m. on Sunday, then that shift would end at 6 a.m. on Monday. The licensee could consider all 10 hours as having been worked on the Sunday, or the licensee could count 4 hours worked on Sunday (from 8 p.m.–12 a.m.) and 6 hours worked on Monday (from 12 a.m.–6 a.m.). The final rule and section IV. of this document refer to these two methods of counting the hours of an individual's overnight work shift under § 26.205(d)(7) as the ''work hour counting systems.''

Section 26.205(d)(7)(iii)

New § 26.205(d)(7)(iii) requires each licensee to document, in its FFD policies and procedures required by 10 CFR 26.27 and 10 CFR 26.203, which work hour counting system in § 26.205(d)(7)(ii) the licensee is using. As a general matter, good regulatory practice requires each licensee to clearly document its licensing basis, especially where the NRC's requirements offer the licensee one or more regulatory alternatives. If a licensee clearly and sufficiently documents its licensing basis, then the licensee can more easily determine, despite changes (as applicable) in personnel, procedures, or its design, whether the licensee continues to comply with its licensing basis and applicable NRC requirements. Effective documentation also allows the NRC to quickly and accurately determine the licensee's status of compliance and affords the public an opportunity to understand the legal constraints to which that licensee is subject.

Section 26.27 requires licensees to establish written FFD policies and procedures, and 10 CFR 26.203(a) and (b) requires licensees to include in the § 26.27 written policies and procedures the specific policies and procedures for the management of fatigue, including the process for implementing the work hour controls in § 26.205. To ensure clarity in the regulations and each licensee's licensing basis, new § 26.205(d)(7)(iii) clearly establishes the licensee's (and applicant's) regulatory obligation to document in its FFD policies and procedures, required by § 26.27 and § 26.203(a) and (b), the work hour counting system the licensee is using.

Section 26.205(d)(8)

Under new § 26.205(d)(8), each licensee needs to explicitly state, in its FFD policies and procedures required by 10 CFR 26.27 and 10 CFR 26.203, the requirements with which it is complying: the minimum days off provisions in § 26.205(d)(3) or the maximum average work hours requirements in § 26.205(d)(7). Under 10 CFR 26.203(a) and (b), information concerning the process for implementing the maximum average work hours requirements would include, for instance, the beginning and end times and days of the week for the averaging periods. As with new § 26.205(d)(7)(iii), because licensees have the option of two cumulative fatigue management programs to implement, § 26.205(d)(8) establishes the licensee's (and applicant's) regulatory obligation to document in its FFD policies and procedures, required by § 26.27 and § 26.203(a) and (b), the requirements with which it will comply: the requirements in § 26.205(d)(3) or § 26.205(d)(7). Licensees are free to switch to the other set of legally-binding requirements, so long as the requirement of § 26.205(d)(8) is met.

Section 26.205(d)(8) was designated as § 26.205(d)(7)(ii) in the proposed rule. That provision of the proposed rule could have been read to require licensees to document their election of requirements only if they implemented the alternative. By removing the requirement from § 26.205(d)(7) and establishing the requirement in a regulatory provision independent of the provisions concerning the alternative, the NRC ensures that all licensees document their election.

Section 26.205(e)(1)(i)

Section 26.205(e)(1) requires licensees to review the actual work hours and performance of individuals who are subject to this section for consistency with the requirements of § 26.205(c), so that licensees can determine if they are controlling the work hours of individuals consistent with the objective of preventing impairment from fatigue due to the duration, frequency, or sequencing of successive shifts. Section 26.205(e)(1)(i) requires the licensees to assess the actual work hours and performance of individuals whose actual hours worked during the review period exceeded an average of 54 hours per week in any shift cycle while the individuals' work hours are subject to the requirements of § 26.205(d)(3). The NRC is amending § 26.205(e)(1)(i) to require licensees to assess the actual work hours and performance of

individuals whose actual hours worked during the review period exceeded an average of 54 hours per week in any averaging period of up to 6 weeks. The duration of the averaging periods is the same duration that the licensees use to control the individuals' work hours to comply with the requirements of § 26.205(d)(7). In some instances, the averaging period used to control individuals' work hours to comply with the requirements of § 26.205(d)(7) will be a partial averaging period of 1 or more full (*i.e.,* 7 consecutive calendar days) weeks but less than the duration of the licensee's normal full averaging period. Section 26.205(e)(1)(i) requires licensees to review the actual work hours and performance of individuals whose actual hours worked exceeded an average of 54 hours per week in any averaging period, regardless of whether the averaging period was a full or partial averaging period.

10 CFR 26.207 Waivers and Exceptions

Section 26.207 provides the criteria that licensees must meet to grant waivers and enact exceptions from the work hour requirements in § 26.205(d)(1) through (d)(5)(i). The NRC is making conforming changes to paragraphs within § 26.207 to ensure consistency between the implementation of the minimum days off requirements in § 26.205(d)(3) and the implementation of the maximum average work hours requirements in § 26.205(d)(7).

Section 26.207(a)

Section 26.207(a) permits licensees to grant waivers from the work hours requirements in § 26.205(d)(1) through (d)(5)(i) for conditions that meet the two criteria specified in § 26.207(a). The NRC is revising § 26.207(a) to authorize licensees to grant waivers from the work hours requirements in § 26.205(d)(7) if the criteria in § 26.207(a) are met.

Section 26.207(b)

Section 26.207(b) relieves licensees from the minimum days off requirements of § 26.205(d)(3) by allowing them to exclude shifts worked by security personnel during the actual conduct of NRC-evaluated force-on-force tactical exercises when calculating the individual's number of days off. The final rule amends § 26.207(b) to permit licensees to exclude from the maximum average work hours requirements of § 26.205(d)(7) the hours worked by security personnel during the actual conduct of NRC-evaluated force-on-force tactical exercises.

10 CFR 26.209 Self-Declarations

Section 26.209 requires licensees to take immediate action in response to a self-declaration by an individual who is working under, or being considered for, a waiver from the work hour controls in § 26.205(d)(1) through (d)(5)(i). The NRC is making a conforming change to § 26.209(a) to ensure consistency between the implementation of the minimum days off requirements in § 26.205(d)(3) and the implementation of the maximum average work hours requirements in § 26.205(d)(7).

Section 26.209(a)

Section 26.209(a) is amended to address the situation in which an individual is performing, or being assessed for, work under a waiver of the requirements contained in § 26.205(d)(7) and declares that, due to fatigue, he or she is unable to safely and competently perform his or her duties. The licensee shall immediately stop the individual from performing any duties listed in § 26.4(a), except if the individual is required to continue performing those duties under other requirements in Chapter 1 of Title 10. If the subject individual must continue performing the duties listed in § 26.4(a) until relieved, then the licensee shall immediately take action to relieve the individual.

10 CFR 26.211 Fatigue assessments

Section 26.211 requires licensees to conduct fatigue assessments under several conditions. The NRC is making conforming changes to paragraphs within § 26.211 to ensure consistency between the implementation of the minimum days off requirements in § 26.205(d)(3) and the implementation of the maximum average work hours requirements in § 26.205(d)(7).

Section 26.211(b)(2)(iii)

Section 26.211(b)(2)(iii) prohibits individuals from performing a post-event fatigue assessment if they evaluated or approved a waiver of the limits specified in § 26.205(d)(1) through (d)(5)(i) for any of the individuals who were performing or directing the work activities during which the event occurred if the event occurred while such individuals were performing work under that waiver. The final rule amends § 26.211(b)(2)(iii) to prohibit individuals from performing a post-event fatigue assessment if they evaluated or approved a waiver of the limits specified in § 26.205(d)(7) for any of the individuals who were performing or directing the work activities during which the event occurred if the event occurred while such individuals were performing work under that waiver.

Section 26.211(d)

Section 26.211(d) prohibits licensees from concluding that fatigue has not degraded or will not degrade an individual's ability to safely and competently perform his or her duties solely on the basis that the individual's work hours have not exceeded any of the limits specified in § 26.205(d)(1) or that the individual has had the minimum rest breaks required in § 26.205(d)(2) or the minimum days off required in § 26.205(d)(3) through (d)(5). The NRC is amending § 26.211(d) to include the maximum average work hours among the criteria that licensees may not solely rely on when concluding that fatigue has not degraded or will not degrade an individual's ability to safely and competently perform his or her duties.

V. Availability of Documents

The following table lists documents that are related to this final rule and available to the public and indicates how they may be obtained. See the **ADDRESSES** section of this document on the physical locations and Web sites where the documents may be accessed.

Document	PDR	Web	NRC Library (ADAMS)
U.S. Nuclear Regulatory Commission, Regulatory Guide 5.73, ''Fatigue Management For Nuclear Power Plant Personnel'' (March 2009).	X	.....	ML083450028
U.S. Nuclear Regulatory Commission, Generic Letter 82–12, ''Nuclear Power Plant Staff Working Hours'' (June 15, 1982).	X	.....	ML082840762
PRM–26–5, Petition to Amend 10 CFR Part 26, ''Fitness-for-Duty Programs,'' filed by the Nuclear Energy Institute (September 3, 2010).	X	Docket ID NRC–2010–0304	ML102590440

Document	PDR	Web	NRC Library (ADAMS)
Anthony R. Pietrangelo on Behalf of the Nuclear Energy Institute; Notice of Receipt of Petition for Rulemaking, 75 FR 65249 (October 22, 2010).	.....	Docket ID NRC–2010–0304.	
Request for Enforcement Discretion filed by the Nuclear Energy Institute (September 23, 2010).	X	.....	ML102710208
PRM–26–6, Petition to Amend 10 CFR Part 26, filed by Eric Erb (August 17, 2010).	X	Docket ID NRC–2010–0310	ML102630127
Eric Erb; Notice of Receipt of Petition for Rulemaking, 75 FR 71368 (November 23, 2010).	.....	Docket ID NRC–2010–0310.	
SECY–11–0003, Status of Enforcement Discretion Request and Rulemaking Activities Related to 10 CFR Part 26, Subpart I, ''Managing Fatigue'' (January 4, 2011).	X	.....	ML103420201
SECY–11–0028, Options for Implementing an Alternative Interim Regulatory Approach to the Minimum Days Off Provisions of 10 CFR Part 26, Subpart I, ''Managing Fatigue'' (February 28, 2011).	X	.....	ML110390077
EGM–09–008, ''Enforcement Guidance Memorandum—Dispositioning Violations of NRC Requirements for Work Hour Controls Before and Immediately After a Hurricane Emergency Declaration'' (September 24, 2009).	X	.....	ML092380177
Staff Requirements—SECY–11–0003—Status of Enforcement Discretion Request and Rulemaking Activities Related to 10 CFR Part 26, Subpart I, ''Managing Fatigue'' and SECY–11–0028—Options for Implementing an Alternative Interim Regulatory Approach to the Minimum Days Off Provisions of 10 CFR Part 26, Subpart I, ''Managing Fatigue'' (March 24, 2011).	X	.....	ML110830971
Updated Notice of Public Meeting to Discuss Part 26, Subpart I, Implementation to Understand Unintended Consequences of the Minimum Day Off Requirements (November 15, 2010).	X	.....	ML103160388
Summary of November 18, 2010, Public Meeting to Discuss Part 26, Subpart I, Implementation to Understand Unintended Consequences of the Minimum Day Off Requirements (December 13, 2010).	X	.....	ML103430557
Update—Notice of Public Meeting Regarding Part 26, Subpart I, Minimum Days Off Requirements and Options Licensees May Implement to Receive Enforcement Discretion From These Requirements (December 30, 2010).	X	.....	ML103550089
Summary of January 6, 2011, Public Meeting Regarding Part 26, Subpart I, Minimum Days Off Requirements and Options Licensees May Implement to Receive Enforcement Discretion from these Requirements (February 3, 2011).	X	.....	ML110280446
Notice of Public Meeting to Discuss Alternatives To the Part 26, Subpart I, Minimum Days Off Requirements (January 14, 2011).	X	.....	ML110140315
Summary of January 25, 2011, Public Meeting to Discuss Alternatives to the Part 26, Subpart I, Minimum Days Off Requirements (February 3, 2011).	X	.....	ML110340512
Sunshine **Federal Register** Notice of February 8, 2011, Commission Briefing on the Implementation of Part 26, 76 FR 5626 (February 1, 2011).	X	.....	ML110200295
Transcript of February 8, 2011, Commission Briefing on the Implementation of Part 26.	X	.....	ML110410169
Interim Enforcement Policy for Minimum Days Off Requirements, 76 FR 22802 (April 25, 2011).	.....	Docket ID NRC–2011–0058.	
Alternative to the Minimum Days Off Requirements; Proposed Rule, 76 FR 23208 (April 26, 2011).	.....	Docket ID NRC–2011–0058.	
Alternative to the Minimum Days Off Requirements; Proposed Rule; Correction, 76 FR 24831 (May 3, 2011).	.....	Docket ID NRC–2011–0058.	
Comments of Mr. Erik Erb (May 6, 2011)	X	Docket ID NRC–2011–0058	ML11130A113
Comments of the Union of Concerned Scientists (May 10, 2011).	X	Docket ID NRC–2011–0058	ML11132A013
Comments of Mr. Harry Sloan (May 23, 2011)	X	Docket ID NRC–2011–0058	ML11144A157
Comments of the Nuclear Energy Institute (May 25, 2011)	X	Docket ID NRC–2011–0058	ML11146A109
Comments of Mark Callahan (May 25, 2011)	X	Docket ID NRC–2011–0058	ML11146A110
Comments of Larry Lawson (May 26, 2011)	X	Docket ID NRC–2011–0058	ML11146A111
Comments of Dominion Resources Services, Inc. (May 27, 2011).	X	Docket ID NRC–2011–0058	ML11151A143
Comments of Entergy Operations, Inc and Entergy Nuclear Operations, Inc (May 27, 2011).	X	Docket ID NRC–2011–0058	ML11151A140
Comments of Arizona Public Service Company (May 27, 2011)	X	Docket ID NRC–2011–0058	ML11151A141
Comments of Tennessee Valley Authority (May 26, 2011)	X	Docket ID NRC–2011–0058	ML11153A044

Document	PDR	Web	NRC Library (ADAMS)
PRM–26–5: Petition for Rulemaking; Consideration in the Rulemaking Process, 76 FR 28192 (May 16, 2011).	.....	Docket ID NRC–2010–0304.	
PRM–26–6: Petition for Rulemaking; Consideration in the Rulemaking Process, 76 FR 28191 (May 16, 2011).	.....	Docket ID NRC–2010–0310.	
Update, Notice of Public Meeting to Discuss Implementation Guidance for Cumulative Fatigue Requirements that will be Based on a Maximum 54 Hour Per Week Rolling Average (April 13, 2011).	X	.....	ML11102A071
Summary Of April 27, 2011, Public Meeting to Discuss Implementation Guidance for Cumulative Fatigue Requirements that will be Based on a Maximum 54 Hour Per Week Rolling Average (May 16, 2011).	X	.....	ML11126A366
Notice of Public Meeting to Discuss Implementation Guidance for Cumulative Fatigue Requirements that will be Based on a Maximum 54 Hour Per Week Rolling Average (April 29, 2011).	X	.....	ML11119A200
Notice of Public Meeting to Discuss Implementation Guidance for Cumulative Fatigue Requirements that will be Based on a Maximum 54 Hour Per Week Rolling Average (May 17, 2011).	X	.....	ML11139A193
Notice of Public Meeting to Discuss Implementation Guidance for Cumulative Fatigue Requirements that will be Based on a Maximum 54 Hour Per Week Rolling Average (June 6, 2011).	X	.....	ML11144A133
Summary of June 1, 2011, Public Meeting to Discuss Implementation Guidance for Cumulative Fatigue Requirements that will be Based on a Maximum 54 Hour Per Week Rolling Average (June 13, 2011).	X	.....	ML11164A008

VI. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), as amended, the NRC is issuing this final rule that amends 10 CFR part 26 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule are subject to criminal enforcement. Criminal penalties as they apply to regulations in 10 CFR part 26 are discussed in § 26.825.

VII. Compatibility of Agreement State Regulations

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this final rule is classified as compatibility ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of 10 CFR, and although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with a particular State's administrative procedure laws but does not confer regulatory authority on the State.

VIII. Assessment of Federal Regulations and Policies on Families

In accordance with Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), the NRC has assessed this action against the seven factors set forth in this act. The NRC has determined that this action will not negatively affect family well-being.

IX. Voluntary Consensus Standards

The NRC is using this standard instead of the following voluntary consensus standard developed by the American Nuclear Society (ANS): American National Standards Institute (ANSI)/ANS–3.2–1988. The NRC has determined that using a Government-unique standard is justified. The NRC declined to use the ANS standard when the fatigue management provisions in Subpart I of 10 CFR part 26 were adopted in 2008. (73 FR 16966; March 31, 2008, at 17170 (second and third column)). The alternative for managing cumulative fatigue through a maximum average work hours requirement in this final rule has no counterpart in ANSI/ANS–3.2–1988 that could be adopted to manage cumulative fatigue, and the NRC declines to reconsider its overall decision in the 2008 rulemaking not to adopt the fatigue management approach embodied in the ANS standard. Accordingly, the NRC concludes that there are no voluntary consensus standards that could be adopted in lieu of the adoption of the Government-unique standard in this final rule.

X. Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that this final rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This final rule allows licensees of nuclear power reactors to use a different method from the one previously prescribed in the NRC's regulations for determining whether certain nuclear power plant workers must be afforded time off from work.

The NRC has determined that the alternative for determining time off does not significantly alter the likelihood that there will be an increase in fatigued workers causing operational problems or a radiological event, or being unable to properly perform their functions. The alternative provides affected licensees with a more-easily implemented approach for determining when subject individuals must be afforded the time off. The NRC recognizes that there are unusual potential circumstances in which the alternative requirement could be met and the schedule could be fatiguing. Such schedules include having only one in every nine days off or consistently working the maximum

allowable hours, which would likely result in cumulative fatigue. However, the industry has stated that these unusual schedules are improbable. The NRC concludes that this alternative approach, together with other aspects of the rule that remain unchanged, provide reasonable assurance that licensees will manage cumulative fatigue in a manner that contributes to the protection of public health and safety and common defense and security. In addition, the alternative is expected to reduce scheduling constraints on certain safety-beneficial practices. Because the NRC's regulatory objective continues to be met under the alternative adopted in this final rule, there is no change in environmental impacts, during operation or while the nuclear power plant is in shutdown, as compared with the environmental impact of the minimum days off requirements.

The primary alternative to this action is the no-action alternative. The no-action alternative could result in a greater administrative burden on nuclear power plant licensees in complying with the minimum days off requirements, as compared with the alternative to the minimum days off requirements under the final rule. In addition, individuals subject to minimum days off requirements could personally believe that their quality of life and work conditions are less favorable under the no-action alternative, as compared with the alternative maximum average work hours requirements that could be selected under the final rule.

The no-action alternative provides little or no environmental benefit. In addition, the no-action alternative has led nuclear power plant licensees to use work scheduling approaches that, for example, reduce their capability to use the most knowledgeable workers in responding to plant events and conditions. This may provide less safety and greater risk as compared with the less burdensome scheduling approaches that licensees are allowed to use under the alternative to the minimum days off requirements under the final rule.

For these reasons, the NRC concludes that this rulemaking does not have a significant adverse impact on the environment. This discussion constitutes the environmental assessment for this final rule. The NRC received no comments on the draft environmental assessment in the proposed rule's SOC.

XI. Paperwork Reduction Act Statement

This final rule increases the burden on licensees that implement the alternate method of managing cumulative fatigue. These licensees will incur a one-time burden to revise FFD procedures, modify their work hour tracking systems and individual work scheduling systems, and state in their FFD policies and procedures the cumulative fatigue management requirements and work hour counting system being used. The public burden for this information collection is estimated to average 11.7 hours per recordkeeper. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB Control Number 3150–0146.

Send comments on any aspect of these information collections to the Information Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *Infocollects.Resource@nrc.gov* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0146), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection unless the requesting document displays a currently valid OMB control number.

XII. Regulatory Analysis

The NRC has not prepared a full regulatory analysis for this final rulemaking. The NRC has determined that the maximum average work hours requirement provides reasonable assurance that subject individuals are not impaired due to cumulative fatigue caused by excessive work hours. As such, adequate implementation of the alternative approach maintains reasonable assurance that persons subject to work hour controls can safely and competently perform their assigned duties and therefore meets the intent of the minimum days off requirement. The 2008 10 CFR Part 26 final rule contained a regulatory analysis to support the minimum days off requirement. Because the alternative approach offers licensees an option that is comparable to the minimum days off requirements in managing cumulative fatigue, the 2008 final rule regulatory analysis also supports this final rule.

Furthermore, both nuclear power plant licensees and individuals subject to the NRC's requirements in 10 CFR 26.205(d)(3) governing minimum days off derive substantial benefits by the NRC's adoption of the alternative approach for controlling cumulative fatigue through maximum average work hours that can be adopted by those licensees. In addition, the NRC concludes that providing an alternative maintains the ability of those licensees to continue using scheduling practices that have a positive safety benefit. The NRC's conclusions in this regard are based upon: (1) Information presented by two petitioners for rulemaking seeking changes to the work hour controls in 10 CFR 26.205; (2) NEI's request for enforcement discretion of those same regulatory provisions in 10 CFR 26.205; (3) evidence gathered from stakeholders at the three public meetings; (4) analysis performed by the NRC staff and explained to the Commission in memoranda dated January 4, 2011, and February 28, 2011; and (5) comments received on the proposed rule. In the memoranda to the Commission, the NRC staff documented its evaluation of the options available to the Commission to address the concerns raised in the petitions for rulemaking and request for enforcement discretion. At the February 8, 2011, Commission briefing on the implementation of 10 CFR part 26, stakeholders appeared to support the use of an expedited rulemaking process to address the issues presented by the industry. In view of all of this information, the NRC finds no added value in preparing a more detailed regulatory analysis for this final rule.

XIII. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule affects only licensees that do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XIV. Backfitting

The NRC has determined that the Backfit Rule, 10 CFR 50.109, does not apply to this final rule, nor is the final rule inconsistent with any of the finality provisions in 10 CFR part 52. The final rule, in 10 CFR 26.205(d)(7), provides nuclear power plant licensees with an alternative for compliance with the controls in 10 CFR 26.205(d)(3) governing minimum days off for certain nuclear power plant workers. Licensees are free to comply with either the requirements governing minimum days off or with the alternative requirements in 10 CFR 26.205(d)(7). The NRC

concludes that a backfit analysis is not required for this final rule because this final rule does not contain any provisions that constitute backfitting.

The final rule is not inconsistent with any finality provisions in 10 CFR part 52. No standard design certification rule or standard design approval issued under 10 CFR part 52, or currently being considered by the NRC, addresses FFD requirements in 10 CFR part 26. Accordingly, there are no issues resolved in those design certification rules or design approvals that would be within the scope of the cumulative fatigue controls in this final rule. In addition, the NRC has not issued any combined licenses under 10 CFR part 52. Hence, there are currently no holders of combined licenses who would be protected by applicable issue finality provisions. The NRC concludes that this final rule does not contain any provisions that would be inconsistent with any of the finality provisions in 10 CFR part 52

XV. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 26.

PART 26—FITNESS FOR DUTY PROGRAMS

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

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201, 2297f); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

■ 2. Section 26.203 is amended by revising paragraph (d)(2), the introductory text of paragraph (e)(1), and paragraphs (e)(1)(i) and (e)(1)(ii), to read as follows:

§ 26.203 General provisions.

* * * * *

(d) * * *

(2) For licensees implementing the requirements of § 26.205(d)(3), records of shift schedules and shift cycles, or, for licensees implementing the requirements of § 26.205(d)(7), records of shift schedules and records showing the beginning and end times and dates of all averaging periods, of individuals who are subject to the work hour controls in § 26.205;

* * * * *

(e) * * *

(1) A summary for each nuclear power plant site of all instances during the previous calendar year when the licensee waived one or more of the work hour controls specified in § 26.205(d)(1) through (d)(5)(i) and (d)(7) for individuals described in § 26.4(a). The summary must include only those waivers under which work was performed. If it was necessary to waive more than one work hour control during any single extended work period, the summary of instances must include each of the work hour controls that were waived during the period. For each category of individuals specified in § 26.4(a), the licensee shall report:

(i) The number of instances when each applicable work hour control specified in § 26.205(d)(1)(i) through (d)(1)(iii), (d)(2)(i) and (d)(2)(ii), (d)(3)(i) through (d)(3)(v), and (d)(7) was waived for individuals not working on outage activities;

(ii) The number of instances when each applicable work hour control specified in § 26.205(d)(1)(i) through (d)(1)(iii), (d)(2)(i) and (d)(2)(ii), (d)(3)(i) through (d)(3)(v), (d)(4) and (d)(5)(i), and (d)(7) was waived for individuals working on outage activities; and

* * * * *

■ 3. Section 26.205 is amended by revising paragraphs (b)(5), (d)(4), (d)(5)(i), (d)(5)(ii), and (e)(1)(i) and the introductory text of paragraph (d)(3), and adding new paragraphs (d)(7) and (d)(8) to read as follows:

§ 26.205 Work hours.

* * * * *

(b) * * *

(5) Incidental duties performed off site. Licensees may exclude from the calculation of an individual's work hours unscheduled work performed off site (e.g., technical assistance provided by telephone from an individual's home), provided the total duration of the work does not exceed a nominal 30 minutes during any single break period. For the purposes of compliance with the minimum break requirements of § 26.205(d)(2), and the minimum days off requirements of § 26.205(d)(3) through (d)(5) or the maximum average work hours requirements of § 26.205(d)(7), such duties do not constitute work periods, work shifts, or hours worked.

* * * * *

(d) * * *

(3) Licensees shall either ensure that individuals have, at a minimum, the number of days off specified in this paragraph, or comply with the requirements for maximum average workhours in § 26.205(d)(7). For the purposes of this section, a day off is defined as a calendar day during which an individual does not start a work shift. For the purposes of calculating the average number of days off required in this paragraph, the duration of the shift cycle may not exceed 6 weeks.

* * * * *

(4) During the first 60 days of a unit outage, licensees need not meet the requirements of § 26.205(d)(3) or (d)(7) for individuals specified in § 26.4(a)(1) through (a)(4), while those individuals are working on outage activities. However, the licensee shall ensure that the individuals specified in § 26.4(a)(1) through (a)(3) have at least 3 days off in each successive (i.e., non-rolling) 15-day period and that the individuals specified in § 26.4(a)(4) have at least 1 day off in any 7-day period;

(5) * * *

(i) During the first 60 days of a unit outage or a planned security system outage, licensees need not meet the requirements of § 26.205(d)(3) or (d)(7). However, licensees shall ensure that these individuals have at least 4 days off in each successive (i.e., non-rolling) 15-day period; and

(ii) During the first 60 days of an unplanned security system outage or increased threat condition, licensees need not meet the requirements of § 26.205(d)(3), (d)(5)(i), or (d)(7).

* * * * *

(7) Licensees may, as an alternative to complying with the minimum days off requirements in § 26.205(d)(3), comply with the requirements for maximum average work hours in this paragraph.

(i) Individuals may not work more than a weekly average of 54 hours, calculated using an averaging period of up to six (6) weeks, which advances by 7 consecutive calendar days at the finish of every averaging period.

(ii) For purposes of this section, when an individual's work shift starts at the end of a calendar day and concludes during the next calendar day, the licensee shall either consider the hours worked during that entire shift as if they

were all worked on the day the shift started, or attribute the hours to the calendar days on which the hours were actually worked.

(iii) Each licensee shall state, in its FFD policy and procedures required by § 26.27 and § 26.203(a) and (b), the work hour counting system in § 26.205(d)(7)(ii) the licensee is using.

(8) Each licensee shall state, in its FFD policy and procedures required by § 26.27 and § 26.203(a) and (b), the requirements with which the licensee is complying: the minimum days off requirements in § 26.205(d)(3) or maximum average work hours requirements in § 26.205(d)(7).

(e) * * *

(1) * * *

(i) Individuals whose actual hours worked during the review period exceeded an average of 54 hours per week in any shift cycle while the individuals' work hours are subject to the requirements of § 26.205(d)(3) or in any averaging period of up to 6 weeks, using the same averaging period durations that the licensee uses to control the individuals' work hours, while the individuals' work hours are subject to the requirements of § 26.205(d)(7);

* * * * *

■ 4. Section 26.207 is amended by revising the introductory text of paragraph (a), and paragraph (b), to read as follows:

§ 26.207 Waivers and assessments.

(a) *Waivers.* Licensees may grant a waiver of one or more of the work hour controls in § 26.205(d)(1) through (d)(5)(i) and (d)(7), as follows:

* * * * *

(b) *Force-on-force tactical exercises.* For the purposes of compliance with the minimum days off requirements of § 26.205(d)(3) or the maximum average work hours requirements of § 26.205(d)(7), licensees may exclude shifts worked by security personnel during the actual conduct of NRC-evaluated force-on-force tactical exercises when calculating the individual's number of days off or hours worked, as applicable.

* * * * *

■ 5. Section 26.209 is amended by revising paragraph (a) to read as follows:

§ 26.209 Self-declarations.

(a) If an individual is performing, or being assessed for, work under a waiver of one or more of the requirements contained in § 26.205(d)(1) through (d)(5)(i) and (d)(7) and declares that, due to fatigue, he or she is unable to safely and competently perform his or her duties, the licensee shall immediately stop the individual from performing any duties listed in § 26.4(a), except if the individual is required to continue performing those duties under other requirements of this chapter. If the subject individual must continue performing the duties listed in § 26.4(a) until relieved, the licensee shall immediately take action to relieve the individual.

* * * * *

■ 6. Section 26.211 is amended by revising paragraphs (b)(2)(iii) and (d) to read as follows:

§ 26.211 Fatigue assessments.

(b) * * *

(2) * * *

(iii) Evaluated or approved a waiver of one or more of the limits specified in § 26.205(d)(1) through (d)(5)(i) and (d)(7) for any of the individuals who were performing or directing (on site) the work activities during which the event occurred, if the event occurred while such individuals were performing work under that waiver.

* * * * *

(d) The licensee may not conclude that fatigue has not or will not degrade the individual's ability to safely and competently perform his or her duties solely on the basis that the individual's work hours have not exceeded any of the limits specified in § 26.205(d)(1), the individual has had the minimum breaks required in § 26.205(d)(2) or minimum days off required in § 26.205(d)(3) through (d)(5), as applicable, or the individual's hours worked have not exceeded the maximum average number of hours worked in § 26.205(d)(7).

* * * * *

Dated at Rockville, Maryland, this 15th day of July 2011.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Executive Director for Operations.

[FR Doc. 2011–18395 Filed 7–20–11; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4, 5, 7, 8, 28, and 34

[Docket ID OCC–2011–0018]

RIN 1557–AD41

Office of Thrift Supervision Integration; Dodd-Frank Act Implementation

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting amendments to its regulations governing organization and functions, availability and release of information, post-employment restrictions for senior examiners, and assessment of fees to incorporate the transfer of certain functions of the Office of Thrift Supervision (OTS) to the OCC pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The OCC also is amending its rules pertaining to preemption and visitorial powers to implement various sections of the Act; change in control of credit card banks and trust banks to implement section 603 of the Act; and deposit-taking by uninsured Federal branches to implement section 335 of the Act.

DATES: July 21, 2011, except for the amendments to 12 CFR 4.73 in amendatory instruction 21, 12 CFR 4.74 in amendatory instruction 23, 12 CFR 4.75 in amendatory instruction 25, 12 CFR 4.76 in amendatory instruction 27, which are effective July 21, 2012; the amendment to 12 CFR 5.50 in amendatory instruction 31, which is effective July 21, 2013; and the amendment to 12 CFR 8.6 in amendatory instruction 43, which is effective December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Andra Shuster, Senior Counsel, Heidi Thomas, Special Counsel, Michele Meyer (preemption), Assistant Director, or Stuart Feldstein, Director, Legislative and Regulatory Activities Division, (202) 874–5090; Mitchell Plave (assessments), Special Assistant to the Deputy Chief Counsels, Office of the Chief Counsel, 202–874–5200; Timothy Ward, Deputy Comptroller for Thrift Supervision, (202) 874–4468; or Frank Vance, Manager, Disclosure Services and Administrative Operations, Communications Division, (202) 874–5378, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

On May 26, 2011, the OCC published in the **Federal Register** a notice of proposed rulemaking (NPRM or proposal) to implement Title III, and certain other provisions, of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (Dodd-Frank Act or Act). Title III of the Act transfers the powers, authorities, rights and duties of the OTS to other banking agencies, including the OCC, on the ''transfer

date.'' The transfer date is one year after the date of enactment of the Dodd-Frank Act, July 21, 2011. The Dodd-Frank Act also abolishes the OTS ninety days after the transfer date.

Specifically, the Dodd-Frank Act transfers to the OCC all functions of the OTS and the Director of the OTS relating to Federal savings associations. As a result, the OCC will assume responsibility for the ongoing examination, supervision, and regulation of Federal savings associations.[1] The Act also transfers to the OCC rulemaking authority of the OTS relating to all savings associations, both state and Federal.[2] The legislation continues in effect all OTS orders, resolutions, determinations, agreements, regulations, interpretive rules, other interpretations, guidelines, procedures and other advisory materials in effect the day before the transfer date, and allows the OCC to enforce these issuances with respect to Federal savings associations, unless the OCC modifies, terminates, or sets aside such guidance or until superseded by the OCC, a court, or operation of law.[3] Title III also transfers OTS employees to either the OCC or FDIC, allocated as necessary to perform or support the OTS functions transferred to the OCC and FDIC, respectively.

II. OCC Regulatory Actions To Integrate OTS Functions

As described in the preamble for the proposed rule, the OCC is undertaking a multi-phased review of its regulations, as well as those of the OTS, to determine what changes are needed to facilitate the transfer of supervisory jurisdiction for Federal saving associations to the OCC. This final rule, described in detail below, is part of the first phase of this review and includes provisions revising OCC rules that will be central to internal agency functions and operations immediately upon the transfer date, such as providing for the OCC's assessment of Federal savings associations and adapting the OCC's rules governing the availability and release of information to cover information pertaining to the supervision of those institutions. This final rule also amends OCC regulations necessary to implement certain revisions to the banking laws that either took effect on the enactment of the Dodd-Frank Act or are effective as of the transfer date.

As part of this first phase of our review of OTS and OCC regulations, the OCC also will issue an interim final rule with a request for comments, effective on publication, that republishes those OTS regulations the OCC has the authority to promulgate and will enforce as of the transfer date, with nomenclature and other technical changes.[4] These republished regulations will supersede the OTS regulations in Chapter V for purposes of OCC supervision and regulation of Federal savings associations, and for certain rules for purposes of the FDIC's supervision of state savings associations. OTS regulations that will be unnecessary following the transfer of OTS functions to the OCC, or that are superseded as of the transfer date by provisions of the Dodd-Frank Act, will be repealed at a later date.

In future phases of our regulatory review, the OCC will consider more comprehensive substantive amendments, as necessary, to these regulations. For example, we may propose to repeal or combine provisions in cases where OCC and former OTS rules are substantively identical or substantially overlap. In addition, we may propose to repeal or modify OCC or former OTS rules where differences in regulatory approach are not required by statute or warranted by features unique to either charter. We expect to publish these amendments in one or more notices of proposed rulemaking, the first of which we expect to issue later in 2011. This substantive review also will provide an opportunity for the OCC to ask for comments suggesting revisions to the rules for both national banks and Federal savings associations that would remove provisions that are ''outmoded, ineffective, insufficient, or excessively burdensome,'' consistent with the goals outlined in an executive order recently issued by the President.[5]

III. Description of the Proposal and Comments Received

The NPRM contained amendments to OCC rules at 12 CFR part 4 pertaining to its organization and functions, the availability of information under the Freedom of Information Act (FOIA), the release of non-public OCC information, and restrictions on the post-employment activities of senior examiners; and at 12 CFR part 8, pertaining to assessments. This NPRM also proposed to amend 12 CFR parts 5 and 28, pertaining to change in control of credit card banks and trust banks and deposit-taking by uninsured Federal branches, respectively, and 12 CFR parts 5, 7 and 34, pertaining to preemption and visitorial powers, pursuant to the Dodd-Frank Act. The public comment period closed on June 27, 2011, and the OCC received a total of 45, including comments from consumer advocacy groups, government agencies, representatives of Congress, associations of state officials, industry trade groups, Federal and state banks and thrifts, and law firms. Set forth below is a detailed description of these comments and the resulting final rule.

IV. Section-by-Section Description of Final Rule

A. Part 4

The NPRM contained a number of amendments to part 4 to incorporate the supervision of Federal savings associations within the OCC. We received no substantive comments on the proposed amendments to part 4 and therefore adopt them as proposed, with one technical correction to § 4.14 to include cites to OCC rules applicable to savings associations.

1. Organization and Functions (Part 4, Subpart A)

Subpart A describes the organization and functions of the OCC and provides the OCC's principal addresses. The final rule amends subpart A to reflect the organizational and functional changes resulting from the transfer of the powers and duties of the OTS to the OCC on the transfer date. Other changes conform this subpart to additional provisions in the Dodd-Frank Act, including the Comptroller's membership on the Financial Stability Oversight Council.

2. Freedom of Information Act (Part 4, Subpart B)

Subpart B contains the OCC's rules for making requests for agency records and documents under the FOIA. The final rule amends subpart B to apply these rules to FOIA requests relating to Federal savings associations received by the OCC as of the transfer date, ensures

[1] Dodd-Frank Act, section 312(b)(2)(B)(i)(I), 124 Stat. at 1522 (*to be codified* at 12 U.S.C. 5412). Title III also transfers all functions of the OTS relating to state savings associations to the Federal Deposit Insurance Corporation (FDIC) and all functions relating to the supervision of any savings and loan holding company and nondepository institution subsidiaries of such holding companies, as well as rulemaking authority for savings and loan holding companies, to the Board of Governors of the Federal Reserve System (FRB). Dodd-Frank Act, section 312(b)(1) and (2)(A), 124 Stat. at 1521 (*to be codified* at 12 U.S.C. 5412) (savings and loan holding companies) and (2)(C), 124 Stat. at 1522 (*to be codified* at 12 U.S.C. 5412) (state savings associations).

[2] *Id.* at section 312(b)(2)(B)(i)(II), 124 Stat. at 1522 (*to be codified* at 12 U.S.C. 5412).

[3] *Id.* at section 316(b), 124 Stat. at 1525 (*to be codified* at 12 U.S.C. 5414).

[4] Pursuant to section 316(c)(2) of the Dodd-Frank Act, 124 Stat. at 1525 (*to be codified* at 12 U.S.C. 5415), the OCC and the FDIC published in the **Federal Register** on July 6, 2011 a joint notice that identified those OTS regulations that each agency will enforce as of the transfer date. 76 FR 39246.

[5] Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011).

that records of the OTS are subject to the OCC's FOIA regulations, and makes various technical changes to part 4 to correct technical errors and to update appropriate references to OCC units charged with handling FOIA requests. The final rule also provides that the OTS's former rules will continue to govern requests received by the OTS prior to the transfer date.

3. Non-Public Information (Part 4, Subpart C)

Subpart C contains OCC rules and procedures for requesting access to various types of nonpublic information and the OCC's process for reviewing and responding to such requests. It also clarifies the persons and entities with which the OCC can share non-public information. The final rule amends subpart C to cover OTS nonpublic information transferred to the OCC and, going forward, OCC nonpublic information related to Federal savings associations. The final rule also provides that nonpublic information in the possession of former employees or officials of the OTS will remain subject to confidentiality safeguards and procedures for requesting access to such information. As with FOIA requests, the final rule provides that the OTS's former rules will continue to govern requests for nonpublic information received by the OTS prior to the transfer date.

4. One-Year Restrictions on Post-Employment Activities of Senior Examiners (Part 4, Subpart E)

Subpart E sets forth the employment restrictions placed on senior examiners for one year after these individuals leave the employment of the OCC. During this period, a former senior examiner of a national bank is prohibited from accepting compensation from the bank or from an entity that controls the bank. The OTS adopted nearly identical rules. The final rule amends subpart E to include senior examiners of savings associations.

B. Dodd-Frank Act Amendments Affecting Approval of Change in Control Notices and Acceptance of Deposits by Federal Branches (Parts 5 and 28)

This final rule contains amendments to 12 CFR part 5 to implement section 603 of the Dodd-Frank Act. Section 603 provides for a three-year moratorium (with certain exceptions) on the approval of a change in control of credit card banks, industrial banks and trust banks, if the change in control would result in a commercial firm controlling (directly or indirectly) such a bank. The moratorium took effect on the date of enactment of the Act, *i.e.,* July 21, 2010. The proposal amended 12 CFR 5.50(f) to conform OCC regulations to this section of the Act. We received no comments on this amendment and adopt it as proposed.

Section 6 of the International Banking Act, 12 U.S.C. 3104(b), provides that uninsured Federal branches of foreign banks may not accept deposits in an amount of less than the standard maximum deposit insurance amount (SMDIA). The SMDIA is defined in 12 U.S.C. 1821(a)(1)(E) to mean $100,000, subject to certain adjustments provided for in the statute. Section 335 of the Dodd-Frank Act, which takes effect on the transfer date, amends 12 U.S.C. 1821(a)(1)(E) to change the amount from $100,000 to $250,000. Section 28.16(b) of the OCC's regulations states that an uninsured Federal branch may accept initial deposits of less than $100,000 only from certain persons. In order to conform this section of the OCC's regulations to the statutory changes and to prevent the need to continually amend this section for changes in the SMDIA, the proposal amended 12 CFR 28.16(b) to refer to 12 U.S.C. 1821(a)(1)(E), rather than the obsolete reference to $100,000. We received no comments on this amendment and adopt it as proposed.

C. Preemption and Visitorial Powers (Parts 5, 7, and 34)

1. Dodd-Frank Act Provisions Affecting Preemption and Visitorial Powers

The Dodd-Frank Act contains provisions, effective as of the transfer date (July 21, 2011), that affect the scope of preemption for operating subsidiaries, Federal savings associations, and national banks.[6] The Act also sets forth procedural requirements for future preemption determinations[7] and codifies the Supreme Court's visitorial powers decision in *Cuomo* v. *Clearing House Association, L.L.C.*[8]

The Act precludes preemption of state law for national bank subsidiaries, agents and affiliates.[9] The Act also changes the preemption standards applicable to Federal savings associations to conform to those applicable to national banks. The Act specifically provides that, as of the transfer date, determinations by a court or by the OCC under the Home Owners' Loan Act (HOLA) with respect to Federal savings associations must be made in accordance with the laws and legal standards applicable to national banks regarding the application of state law.[10]

The Act further provides that ''state consumer financial laws'' [11] may be preempted only if: (1) Application of such a law would have a ''discriminatory effect'' on national banks compared with state-chartered banks in that state; (2) ''in accordance with the legal standard for preemption in the decision of the Supreme Court in'' *Barnett Bank of Marion County, N.A.* v. *Nelson,*[12] the state consumer financial law ''prevents or significantly interferes with the exercise by the national bank of its powers'' (*Barnett* standard); or (3) the state consumer financial law is preempted by a provision of Federal law other than Title LXII of the Revised Statutes.[13]

The Dodd-Frank Act imposes new procedures and consultation requirements with respect to how the OCC may reach certain future preemption determinations and clarifies the criteria for judicial review of these determinations. Specifically, the Act requires that the OCC make preemption determinations with regard to state consumer financial laws under the *Barnett* standard by regulation or order on a ''case-by-case basis'' in accordance with applicable law.[14] The Act defines ''case-by-case basis'' as a determination by the Comptroller as to the impact of a ''particular'' state consumer financial law on ''any national bank that is subject to that law'' or the law of any other state with substantively equivalent terms.[15] When making a determination under this provision that a state consumer financial law has substantively equivalent terms as the law the OCC is preempting, the OCC

[6] Dodd-Frank Act, sections 1044–1046, 124 Stat. at 2014–2017 (*to be codified* at 12 U.S.C. 25b, 1465). Section 1044, which amends chapter one of title LXII of the Revised Statutes by inserting a new section 5136C (*to be codified* at 12 U.S.C. 25b), contains the principal national bank preemption provisions.

[7] *Id.* at section 1044(a), 124 Stat. at 2015–2016 (*to be codified* at 12 U.S.C. 25b).

[8] 129 S. Ct. 2710 (June 29, 2009).

[9] Dodd-Frank Act, sections 1044(a), 1045, 124 Stat. at 1376, 2016, 2017 (*to be codified* at 12 U.S.C. 25b).

[10] *Id.* at section 1046, 124 Stat. at 2017 (*to be codified* at 12 U.S.C. 1465).

[11] The Dodd-Frank Act defines the term ''state consumer financial law'' to mean a state law that (1) does not directly or indirectly discriminate against national banks and that (2) directly and specifically (3) regulates the manner, content, or terms and conditions of (4) any financial transaction or related account (5) with respect to a consumer. *Id.* at section 1044(a), 124 Stat. at 2014–2015 (*to be codified* at 12 U.S.C. 25b). The Dodd-Frank Act does not address the application of state law that is not a ''state consumer financial law'' to national banks.

[12] 517 U.S. 25 (1996).

[13] Dodd-Frank Act, section 1044(a), 124 Stat. at 2015 (*to be codified* at 12 U.S.C. 25b).

[14] *Id.*

[15] *Id.*

must first consult with and take into account the views of the Consumer Financial Protection Bureau (CFPB).[16]

The Dodd-Frank Act also requires there to be substantial evidence, made on the record of the proceeding, to support an OCC order or regulation that declares inapplicable a state consumer financial law under the *Barnett* standard.[17] Finally, the Act requires the OCC to conduct a periodic review, subject to notice and comment, every five years after issuing a preemption determination relating to a state consumer financial law and to publish a list of such preemption determinations every quarter.[18]

Other features of the Dodd-Frank Act address the authority of state attorneys general to enforce applicable Federal and state laws. The National Bank Act, at 12 U.S.C. 484, vests in the OCC exclusive visitorial powers with respect to national banks, subject to certain express exceptions.[19] On June 29, 2009, the Supreme Court issued its opinion in *Cuomo.* The Court held that when a state attorney general files a lawsuit to enforce a state law against a national bank, ''[s]uch a lawsuit is not an exercise of 'visitorial powers' and thus the Comptroller erred by extending the definition of 'visitorial powers' to include 'prosecuting enforcement actions' in state courts.'' [20] Conversely, the decision recognized the ''regime of exclusive administrative oversight by the Comptroller'' [21] applicable to national banks. Accordingly, under *Cuomo,* a state attorney general may bring an action against a national bank in a court of appropriate jurisdiction to enforce non-preempted state laws, but is restricted in conducting non-judicial investigations or oversight of a national bank.[22]

The Dodd-Frank Act codifies the Supreme Court's decision in *Cuomo* regarding enforcement of state law against national banks by providing that no provision ''of this title'' [23] or other limits restricting the visitorial powers to which a national bank is subject shall be construed to limit or restrict the authority of any state attorney general to ''bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law.'' [24]

In addition, the Act provides that these visitorial powers provisions shall apply to Federal savings associations and their subsidiaries to the same extent and in the same manner as if they were national banks or national bank subsidiaries.[25]

2. Description of the Proposal

The proposal amended provisions of the OCC's regulations relating to preemption (12 CFR 7.4007, 7.4008, 7.4009, and 34.4) (2004 preemption rules), operating subsidiaries (12 CFR 5.34 and 7.4006), and visitorial powers (12 CFR 7.4000) to implement the provisions of the Dodd-Frank Act that affect the scope of national bank and Federal thrift preemption and codify *Cuomo.*

First, we proposed rescission of 12 CFR 7.4006, which is the OCC's regulation concerning the application of state laws to national bank operating subsidiaries. The proposal also made conforming revisions to the OCC's operating subsidiary rules at 12 CFR 5.34(a) and paragraph (e)(3) to refer to new 12 U.S.C. 25b, which includes the codification of the Dodd-Frank Act preclusion of operating subsidiary preemption.[26]

To implement the Act's changes to the preemption standards under the HOLA to conform to those applicable to national banks, we proposed adding new §§ 7.4010(a) and 34.6 to our regulations. The new sections provide that state laws apply to Federal savings associations and their subsidiaries to the same extent and in the same manner as those laws apply to national banks and their subsidiaries, respectively. The proposal also added § 7.4010(b) to similarly subject Federal savings associations and their subsidiaries to the same visitorial powers provisions in the Dodd-Frank Act that apply to national banks and their subsidiaries.

In addition, the proposal made conforming changes to the 2004 preemption rules at 12 CFR 7.4007 (concerning deposit-taking), 7.4008 (non-real estate lending), and 34.4 (real estate lending) to reflect the Act's provisions concerning preemption of state consumer financial laws. Those rules had provided that ''state laws that obstruct, impair, or condition a national bank's ability to fully exercise its Federally authorized * * * powers are not applicable to national banks.'' The proposal noted that, while the phrase ''obstruct, impair or condition'' had been drawn from and was intended to be consistent with the standards cited by the Supreme Court in *Barnett,* the terminology had resulted in misunderstanding and confusion. Accordingly, the proposal removed that phrase from these preemption rules. The proposal further clarified that a state law is not preempted to the extent that result is consistent with the *Barnett* decision. The proposal also deleted § 7.4009, which had provided only that ''state laws that obstruct, impair, or condition a national bank's ability to fully exercise its powers to conduct activities under Federal law do not apply to national banks'' without identifying any types of state laws that would be preempted.

Finally, the proposal made several changes to the OCC's visitorial powers regulation, 12 CFR 7.4000, to conform the regulations to the Supreme Court's decision in the *Cuomo* case as adopted by the Dodd-Frank Act. First, it added a reference to 12 U.S.C. 484 in the general rule, set forth § 7.4000(a)(1), that only the OCC may exercise visitorial powers with respect to national banks subject to certain exceptions. Second, to incorporate the *Cuomo* Court's recognition that nonjudicial investigations of national banks

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[16] *Id.*

[17] *Id.* at section 1044(a), 124 Stat. at 2016 (*to be codified* at 12 U.S.C. 25b).

[18] *Id.*

[19] Section 484 provides that ''[n]o national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.''

[20] 129 S. Ct. at 2721.

[21] *Id.* at 2718.

[22] The Court stated that:

The request for information [by the Attorney General] in the present case was stated to be ''in lieu of'' other action; implicit was the threat that if the request was not voluntarily honored, that other action would be taken. All parties have assumed, and we agree, that if the threatened action would have been unlawful the request-cum-threat could be enjoined. Here the threatened action was not the bringing of a civil suit, or the obtaining of a judicial search warrant based on probable cause, but rather the Attorney General's issuance of subpoena on his own authority under New York Executive Law, which permits such subpoenas in connection with his investigation of ''repeated fraudulent or illegal acts * * * in the carrying on, conducting or transaction of business.'' *See* N.Y. Exec. Law Ann. § 63(12) (West 2002). That is not the exercise of the power of law enforcement ''vested in the courts of justice'' which 12 U.S.C. 484(a) exempts from the ban on exercise of supervisory power.

Accordingly, the injunction below is affirmed as applied to the threatened issuance of executive subpoenas by the Attorney General for the State of New York, but vacated insofar as it prohibits the Attorney General from bringing *judicial enforcement actions.*

Cuomo, 129 S. Ct. at 2721–2722 (emphasis added).

[23] Dodd-Frank Act, section 1047(a), 124 Stat. at 2018 (*to be codified* at 12 U.S.C. 25b) (referring to Title LXII of the Revised Statutes).

[24] *Id.*

[25] *Id.* at section 1047(b), 124 Stat. at 2018 (*to be codified* at 12 U.S.C. 1465).

[26] *Id.* at section 1045, 124 Stat. at 2017 (*to be codified* at 12 U.S.C. 25b) provides that Title LXII of the Revised Statutes and section 24 of the Federal Reserve Act (12 U.S.C. 371) do not preempt, annul, or affect the applicability of state law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).

generally constitute an exercise of visitorial powers, the proposal revised the definition of ''visitorial powers'' in § 7.4000(a)(2)(iv) to clarify that those powers include ''investigating or enforcing compliance with any applicable Federal or state laws concerning those activities.'' Third, the proposal added a new paragraph (b) to provide that ''[i]n accordance with the decision of the Supreme Court in *Cuomo* v. *Clearing House Assn., L.L.C.,* 129 S. Ct. 2710 (2009), an action against a national bank in a court of appropriate jurisdiction brought by a state attorney general (or other chief law enforcement officer) to enforce a non-preempted state law against a national bank and to seek relief as authorized thereunder is not an exercise of visitorial powers under 12 U.S.C. 484.''

3. Comments on the Proposal

Commenters who disagreed with the preemption provisions of the proposal generally relied on several principal arguments:

○ First, that the *Barnett* standard preemption provision is a new statutory ''prevent or significantly interfere'' standard that the proposal impermissibly seeks to broaden. These commenters referred to portions of the language of the statute and legislative history in support of their assertion that the Dodd-Frank Act adopts a new preemption standard, narrower than the *Barnett* decision's ''conflict'' preemption analysis.

○ Second, that the ''obstruct, impair, or condition'' language introduced in the 2004 preemption rules, which the OCC proposed to delete, is inconsistent with *Barnett* and with the ''prevent or significantly interfere'' preemption standard. Many of these commenters asserted that the preemption rules adopted by the OCC in 2004 were impliedly repealed by the Dodd-Frank Act. Therefore, these commenters disagree with the OCC's conclusion that any portions of the 2004 preemption rules and precedents based on those rules remain applicable.

○ Third, by retaining, rather than repealing, rules that preempt categories of state laws, that the proposal would circumvent the Dodd-Frank Act procedural and consultation requirements. These commenters asserted that the preemption of categories and/or terms of state laws is equivalent to ''occupation of the field,'' rather than conflict, preemption. These commenters also believe that the Dodd-Frank Act procedural requirements apply to, and therefore (retroactively) invalidate, certain precedents, including the 2004 preemption rules, adopted prior to the Dodd-Frank Act.

In addition, some of these commenters objected to preemption of state and local laws on grounds that preemption is bad public policy and asserted that preemption had resulted in predatory lending to vulnerable consumers and the financial and subprime mortgage lending crises. A few commenters also asserted that the Dodd-Frank Act limits the OCC's preemption authority to state consumer financial laws only.

Some of these commenters further asserted that the proposed visitorial powers amendments:

○ Could be construed as prohibiting all types of investigative activities by state officials, including collecting complaints from consumers or researching public records.

○ Do not reflect the authority of state attorneys general to enforce compliance with certain Federal laws and regulations to be issued by the CFPB.[27]

○ Incorrectly narrow the definition of visitorial powers to the investigation and enforcement of ''non-preempted,'' rather than ''applicable'' law.

Commenters who supported the preemption and visitorial powers portions of the proposal expressed agreement with the analysis of the Dodd-Frank Act preemption provisions and legislative history set out in the preamble to the proposal. In the view of these commenters, the *Barnett* standard preemption provision adopts the conflict preemption standard that is the fundamental legal standard of the *Barnett* decision. Some commenters agreed that the ''obstruct, impair, or condition'' phrasing used in the 2004 preemption rules was a distillation of this conflict preemption standard. These commenters agreed with the position stated in the preamble to the proposal that eliminating this language does not impact the continued applicability of precedents based on those rules.

In addition, supporting commenters argued that a contrary position would also have negative consequences for national banks because it would eliminate legal certainty concerning which laws apply to their operations. These commenters asserted that consumer loans and deposit products are subject to comprehensive regulation, and preemption has served to provide clarity and certainty as to which regulatory requirements and standards apply to national banks. These commenters opined that preemption of multiple, differing, and sometimes conflicting, state and local laws and regulations is crucial to the ability of banks and thrifts to conduct multi-state operations in a safe and sound manner to the benefit of consumers, small businesses, and the United States economy as a whole. They voiced concern that the imposition of an overlay of potentially 50 state and an indeterminate number of local government rules on top of myriad Federal requirements would have a costly consequence that could materially affect banks and their ability to serve consumers efficiently and effectively across the nation and could deter future product innovation and modernized, more effective consumer disclosures.[28] These commenters cited studies showing that compliance with a multiplicity of state laws can increase costs for consumers and loan losses for banks and decrease credit availability. Some commenters also noted that uniform national laws, and the court and regulatory determinations pursuant to them, have been used in the past as a device to open markets, redress local protectionist measures, reduce the price of credit, increase the availability of credit, and increase the efficiency of banks.

Bank and thrift commenters described the scope of their operations and provided examples of the burdens the application of state and local laws and regulations would impose. According to these institutions, the burdens of having to comply with multiple state and local laws would impair their efficiency in offering core banking products, such as checking accounts, credit cards, mortgage loans, and deposit products. Some commenters also voiced concern that their ability to prudently underwrite loans, offer borrowers needed flexibility, and provide effective consumer disclosures would be compromised by application of various state laws.

Finally, commenters also disputed the contention that preemption encouraged lenders to engage in predatory lending practices that contributed to the subprime mortgage crisis. Some

[27] *Id.* at section 1042(a)(2)(B), 124 Stat. at 2013 (*to be codified* at 12 U.S.C. 5552) (pertaining to the ability of state attorneys general to enforce certain new regulations promulgated by the CFPB).

[28] One commenter noted that a bank operating across state lines could find itself subject to the law of the state where it provides the product or service, the law of the state where its branch is located, or the law of the state where the customer is located. The bank could also be subject to laws at the county, municipal, or other level in any or all of these states. The laws of these locations could be different, and failure to comply with each state and local law could subject the bank to fines, penalties, and litigation, and as result cause it to discontinue activities in certain states to the potential detriment of its customers.

commenters also suggested that the final rule include additional provisions to: clarify that the OCC's regulations concerning non-interest fees and charges (12 CFR 7.4002), adjustable rate mortgages (12 CFR 34.21) and debt cancellation contracts (12 CFR 37.1) remain in effect; revise, rather than eliminate, 12 CFR 7.4009 to conform with §§ 7.4007, 7.4008, and 34.4; clarify that the abrogation of 12 CFR 7.4006 will not be given retroactive effect,[29] confirm that the 2004 preemption rules will also apply to Federal savings associations, to the same extent that those rules apply to national banks; and confirm that all prior OTS preemption actions that are consistent with the holding in *Barnett,* including those based on the HOLA, also continue to be effective.

4. Discussion

The OCC has carefully considered all of the points raised by all of the commenters. As described in detail in the next section and for the reasons next discussed, the OCC is issuing a final rule that is substantially the same as the proposal with additional instructive commentary and certain modifications to the visitorial powers provisions to address specific concerns that commenters raised and a clarifying change to §§ 7.4010(a) and 34.6 regarding the applicability of state law to Federal savings associations.

a. The Role of Preemption in the U.S. Banking System

As noted above, in addition to comments on specific aspects of the proposed rule, some commenters urged general disfavor of the concept of Federal preemption as applied to the powers of national banks, and some also contended that preemption in the context of national banks contributed to predatory lending practices, which, in turn contributed to the recent financial crisis. Both of these concerns are important to address as threshold matters.

When Congress established the fundamental structure of the U.S. banking system in 1863, it created national banks and a national banking system to operate in parallel with the existing state banking system—a ''dual banking system.'' Congress did not abolish state banking, but it did include explicit protections in the new framework so that national banks would be governed by Federal standards administered by a new Federal agency—the Office of the Comptroller of the Currency—and not by state authority.

Perhaps not surprisingly, the independence of national banks from state authority over their banking business has produced tensions and disputes over the years. Yet, a long series of Supreme Court decisions beginning in the earliest years of the national banking system have confirmed the fundamental principle of Federal preemption as applied to national banks: that the Federally-granted banking powers of national banks are governed by national standards set at the Federal level, subject to supervision and oversight by the OCC. These characteristics are fundamental to the duality of the ''dual banking system.'' Thus established, the twin pillars of the national and state banking systems have been fundamental to the structure—and success—of the U.S. banking system for nearly 150 years. The Supreme Court's *Barnett* decision was a particularly thorough treatment of this background, applying a conflict preemption standard consistent with over a century of Supreme Court precedent as the yardstick for determining when state law applied to a national bank.

With this design, the state and national banking systems have grown up around each other in this ''dual banking system.'' Encompassing both large institutions that market products and services regionally, nationally and globally, and smaller institutions that focus their business on their immediate communities, this dual system is diverse, with complex linkages and interdependencies. In this context, and over time, a benefit has been that the ''national'' part of the dual banking system, the part that has allowed large and small banks to operate under uniform national rules across state lines, has helped to foster the growth of national products and services and multi-state markets. And the system also has supported the contributions of the state systems, allowing states to serve as a ''laboratory'' for new approaches applicable to their state-supervised institutions.

Throughout our history, uniform national standards have proved to be a powerful engine for prosperity and growth. National standards for national banks have been very much a part of this history, benefiting individuals, business and the national economy. In the 21st Century, the Internet and the advent of technological innovations in the creation and delivery of financial products and services has accentuated the geographic seamlessness of financial services markets, highlighting the importance of uniform standards that attach based on the product or service being provided, applying wherever and however the product or service is provided. However, the premise that Federally-chartered institutions would be subject to standards set at the Federal, rather than state-by-state level, does not and should never mean that those institutions are subject to lax standards. National banks are subject to extensive regulation at the Federal level—which is being considerably enhanced by many provisions of the Dodd-Frank Act—and to regular, and in some cases, continuous examination of their operations.

Because of the degree of regulation and supervision to which national banks are subject, national banks—and other Federally-regulated depository institutions—had limited involvement in subprime lending and the worst subprime loans were originated by nonbank lenders and brokers [30] where national bank preemption was not applicable. National bank preemption did not and does not prevent regulation of nonbank mortgage lenders and brokers, and going forward, the CFPB's authority in this area will bring a new level of Federal standards, oversight and enforcement over this ''shadow banking system.'' Concerns that have been expressed that Federal consumer protection rules were not sufficiently

[29] One commenter also requested clarification that the Dodd-Frank elimination of agent preemption does not apply to employees of national banks and Federal thrifts. Employees of national banks and Federal thrifts acting within the scope of their employment are not acting as agents of these institutions. Therefore, the elimination of preemption for agents has no affect on these employees.

[30] *See* Testimony of Comptroller of the Currency John C. Dugan to the Financial Crisis Inquiry Commission, App. B (April 8, 2010); Department of the Treasury, *Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation* (Jun. 17, 2009), at 69–70 (''worst abuses were made by firms not covered by the CRA,'' which applies only to insured depository institutions); Mason, Joseph R., Kulick, Robert B. and Singer, Hal J., *The Economic Impact of Eliminating Preemption of State Consumer Protection Laws,* 12 U. PA. J. Bus. L. 781 at 782 (2010) (the ''overwhelming majority of subprime mortgage loans were originated by companies that were not subject to preemption * * *''); Committee on Financial Services, H.R. Rep. No 111–94, Mortgage Reform and Anti-Predatory Lending Act (May 4, 2009) (''Subprime lenders included banks, bank affiliates, and non-bank mortgage companies. According to Mortgage Bankers Association (MBA), more than half of subprime mortgages were made by mortgage brokers and lenders with no Federal supervision; a quarter were made by finance companies that are affiliates of bank holding companies and indirectly regulated by the Federal Reserve Board; and the rest were made by institutions directly regulated by Federal financial regulators such as banks, thrifts, and credit unions.''); Barney Frank, Chairman of the House Financial Services Committee, *Lessons of the Subprime Crisis,* Boston Globe, September 14, 2007, at 11A (''Reasonable regulation of mortgages by the bank and credit union regulators allowed the market to function in an efficient and constructive way, while mortgages made and sold in the unregulated sector led to the crisis.'').

robust should be addressed by the CFPB's authority and mandate to write strong Federal consumer protection standards, and its research-based and consumer-tested rulemaking processes envisioned under the Dodd-Frank Act.

b. The Barnett Standard Preemption Provision

With respect to the specifics of the proposal, the OCC concludes that the Dodd-Frank Act does not create a new, stand-alone ''prevents or significantly interferes'' preemption standard, but rather, incorporates the conflict preemption legal standard and the reasoning that supports it in the Supreme Court's *Barnett* decision. This result follows from the language of the statute; is supported by language of other, integrally-related portions of the Dodd-Frank Act preemption provisions; was so described by its sponsors at the time of enactment as intending that result; is consistent with the interpretation Federal courts have accorded virtually identical preemption language in the Gramm-Leach-Bliley Act of 1999 (GLBA); and subsequently has been explained as embodying the intent of the sponsors of the language.

As described in the preamble to the proposal, the language of the *Barnett* standard preemption provision differs substantially from earlier versions of the legislation. Its sponsors have explained that this change was intended to provide consistency and legal certainty by preserving the preemption principles of the Supreme Court's *Barnett* decision, while specifying a process for preemption determinations, and integrating that process with other reforms implemented by the Dodd-Frank Act, prospectively. For example, when asked by Senator Carper to confirm that Section 1044 retained the *Barnett* standard for determining preemption of state consumer financial law passed by the Senate, Chairman Dodd confirmed that was so.[31]

Some commenters assert, however, that the *Barnett* standard provision and the colloquy between Senators Carper and Dodd point to an intention to adopt a new ''prevent or significantly interfere'' preemption test for state consumer financial law. However, this assertion fails to take account of both the context and entirety of the colloquy and is not sustained by the language of the statute, or by the *Barnett* decision itself. Section 1044 of the Dodd-Frank Act provides in pertinent part that a state consumer financial law as applied to a national bank will be preempted only if, ''in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in [*Barnett*], the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers * * *''[32] The ''legal standard for preemption'' employed in the Court's decision is *conflict preemption,* applied in the context of powers granted national banks under Federal law.[33] ''Prevent or significantly interfere'' is not ''the legal standard for preemption in the decision''; it is part of the Court's discussion of its reasoning; an observation made describing other Supreme Court precedent that is cited in the Court's decision.[34]

Therefore, in order to apply the *Barnett* standard preemption provision in section 1044, the first step is that the preemption analysis must be ''in accordance with the legal standard for preemption in the decision of the Supreme Court'' in *Barnett.* Thus, the analysis should be a conflict preemption legal standard, and the analysis should be in accordance with the Court's reasoning applying that standard in the *Barnett* decision. The ''prevent or significantly interfere'' phrase that follows then provides a touchstone to that conflict preemption standard and analysis.[35] The phrase cannot be a new, stand-alone standard, divorced from the reasoning of the decision without ignoring the language that precedes it, which directs that the legal standard be the standard for preemption ''in the decision'' of the Court. That standard is conflict preemption, as supported by the reasoning of the decision, which includes, but is not bounded by, the ''prevent or significantly interfere'' formulation. If Congress had intended a different preemption analysis than the conflict preemption analysis in *Barnett,* it would have been rejecting not just *Barnett,* but also, as described above, well over a century of judicial precedent upon which the decision was founded. We decline to infer that result from legislative language that begins by stating that preemption would be determined ''in accordance with the legal standard for preemption in the decision of the Supreme Court'' in *Barnett.*

This result is supported by other portions of the Dodd-Frank Act and relevant precedent.[36] Specifically, in the same section 1044, the related requirement that the OCC must have ''substantial evidence'' on the record to support adoption of preemption rules or orders refers to ''the legal standard of the decision of the Supreme Court in'' the *Barnett* decision, not to any single phrase used in that decision.[37] It would

[31] As passed by the Senate on May 20, 2010, the legislation incorporated the ''Carper Amendment,'' which provided that a state consumer financial law could be ''preempted in accordance with the legal standards of the decision of the *Supreme Court of the United States in Barnett Bank* v. *Nelson* (517 U.S. 25 (1996)).'' 156 Cong. Rec. S3866 (daily ed. May 18, 2010). The final version of Section 1044 enacted by Congress reflects the revision to the Carper Amendment made by the Conference Committee. When discussing that revision, Senator Carper and Senator Dodd had the following exchange:

Senator Carper: Mr. President, I am very pleased to see that the conference committee * * * retained my amendment regarding the preemption standard for State consumer financial laws with only minor modifications. I very much appreciate the effort of Chairman Dodd in fighting to retain the amendment in conference.

Senator Dodd: I thank the Senator. As the Senator knows, his amendment received strong bipartisan support on the Senate floor and passed by a vote of 80 to 18. It was therefore a Senate priority to retain his provision in our negotiations with the House of Representatives.

Senator Carper: One change made by the conference committee was to restate the preemption standard in a slightly different way, but my reading of the language indicates that the conference report still maintains the Barnett standard for determining when a State law is preempted.

Senator Dodd: The Senator is correct. That is why the conference report specifically cites the *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner,* 517 U.S. 25 (1996) case. There should be no doubt the legislation codifies the preemption standard stated by the U.S. Supreme Court in that case.

Senator Carper: I again thank the Senator. This will provide certainty to everyone—those who offer consumers financial products and to consumer[s] themselves.

156 Cong. Rec. S5902 (daily ed. July 15, 2010) (colloquy between Senator Carper and Chairman Dodd).

See also 156 Cong. Rec. S5889 (daily ed. July 15, 2010) (statement by Senator Tim Johnson). *And see* letter from Senator Thomas R. Carper and Senator Mark Warner to Acting Comptroller John Walsh (April 4, 2011); OCC Interpretive Letter 1132 (letter from Acting Comptroller Walsh to Senators Warner and Carper) (May 12, 2011) (responding to Senators Carper and Warner and providing further detail on the OCC's analysis of the Dodd-Frank Act preemption provisions), *available at http://www.occ.gov/static/interpretations-and-precedents/may11/int1132.pdf;* Letter from Senator Thomas R. Carper and Senator Mark Warner to Treasury Secretary Timothy Geithner (July 8, 2011).

[32] Dodd-Frank Act, section 1044(a), 124 Stat. at 2015 (*to be codified* at 12 U.S.C. 25b).

[33] The *Barnett* decision describes in detail the analysis under the *Barnett* conflict preemption standard. 517 U.S. at 32–35.

[34] 517 U.S. at 33–34.

[35] We note that a recent decision by the U.S. Court of Appeals for the 11th Circuit reached the same result. *Baptista* v. *JPMorgan Chase Bank, N.A.,* 640 F.3d 1194, 1197 (11th Cir. May 11, 2011) (''Thus it is clear that under the Dodd-Frank Act, the proper preemption test asks whether there is a significant conflict between the state and federal statutes—that is, the test for conflict preemption.'').

[36] *See, e.g.,* Dodd-Frank Act, section 1046(a), 124 Stat. at 2017 (*to be codified* at 12 U.S.C. 1465).

[37] *See id.* at section 1044(a), 124 Stat. at 2016 (*to be codified* at 12 U.S.C. 25b) (providing that regulations and orders promulgated under *Barnett* standard preemption do not affect the application

Continued

not make sense for this ''substantial evidence'' requirement to require compliance with a different preemption standard than the standard intended by the *Barnett* standard preemption provision.

Other textual support is found in the Dodd-Frank Act section providing that Federal savings associations are to be subject to the same preemption standards applicable to national banks. Subsection (a) of section 1046 states that preemption determinations for Federal savings associations under the Home Owners' Loan Act ''shall be made in accordance with the laws and legal standards applicable to national banks regarding preemption of state law.'' The heading of subsection (b), which immediately follows, is ''Principles of Conflict Preemption Applicable,'' which can only refer to the national bank preemption standards to which Federal savings associations are made subject by subsection (a).

The *Barnett* standard preemption provision also uses language virtually identical to that used in section 104(d)(2)(A) of the GLBA.[38] The leading case applying that standard similarly treated the phrase ''prevents or significantly interferes'' as a reference to the whole of the Court's *Barnett* preemption analysis and referred to the GLBA statutory language as ''the traditional *Barnett Bank* standards.'' [39]

Accordingly, because we conclude that the Dodd-Frank Act preserves the *Barnett* conflict preemption standard, precedents consistent with that analysis—which may include regulations adopted consistent with such a conflict preemption justification—are also preserved.[40] Further, as of July 21, 2011, those rules and precedents will apply to Federal savings associations to the same extent that they apply to national banks.

c. Deletion of ''Obstruct, Impair, or Condition'' Preemption Formulation and Retention of the 2004 Preemption Rules

Some commenters asserted that the ''obstruct, impair, or condition'' phrasing in the 2004 preemption rules was not only inconsistent with *Barnett* but also inconsistent with the new, narrower ''prevents or significantly interferes'' standard that they assert is imposed by the Dodd-Frank Act. As discussed above, we conclude that the Dodd-Frank Act *Barnett* standard is the conflict preemption standard employed in the Court's decision, not a new test. The question remains, however, of the relationship between that standard and the ''obstruct, impair or condition'' formulation. As we noted in the preamble to the proposal, the words ''obstruct, impair or condition'' as used in the 2004 preemption rules were intended to reflect the precedents cited in *Barnett,* not to create a new preemption standard. Nevertheless, we acknowledge that the phrase created confusion and misunderstanding well before enactment of the Dodd-Frank Act. We also recognize that inclusion of the ''prevents or significantly interferes'' conflict preemption formulation in the *Barnett* standard preemption provision may have been intended to change the OCC's approach by shifting the basis of preemption back to the decision itself, rather than placing reliance on the OCC's effort to distill the *Barnett* principles in this manner.[41]

For these reasons, the OCC is deleting the phrase in the final rule.[42] Eliminating this language from our regulations will remove any ambiguity that the conflict preemption principles of the Supreme Court's *Barnett* decision are the governing standard for national bank preemption. In response to concerns raised by commenters about Dodd-Frank Act legislative intent, misunderstanding and potential misapplication of the ''obstructs, impairs or conditions'' formulation, and the relevant legislative history, the OCC also has reconsidered its position concerning precedent that relied on that standard. To the extent that an existing preemption precedent is exclusively reliant on the phrase ''obstructs, impairs, or conditions'' as the basis for a preemption determination, we believe that validity of the precedent would need to be reexamined to ascertain whether the determination is consistent with the *Barnett* conflict preemption analysis as discussed above.[43]

Some commenters also asserted that the preemption rules promulgated by the OCC in 2004 are not consistent with the Dodd-Frank Act, or with *Barnett,* because they identify categories and/or terms of state laws that are preempted; some of these commenters equated listing of categories of preempted state laws with field preemption. However, these rules are not based on a field preemption standard.[44] They were based on the OCC's conclusion that the listed types and terms of state laws would be preempted by application of the conflict preemption standard of the *Barnett* decision.

The essence of the *Barnett* conflict preemption analysis is an evaluation of the extent and nature of an impediment posed by state law to the exercise of a power granted national banks under Federal law.[45] The ''conflict'' that is analyzed in conflict preemption is the nature and scope of that impediment. Where the same type of impediment exists under multiple states' laws, a single conclusion of preemption can apply to multiple laws that contain the same type of impediment—that generate the same type of conflict with a Federally-granted power. Accordingly, a conflict preemption analysis can be state law-specific, or it can apply to provisions or terms in more than one law that present the same type of conflict.[46] But in all cases,[47] there must

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of a state consumer financial law to a national bank unless substantial evidence made on the record of the proceeding supports the specific finding of preemption ''in accordance with the legal standard of the decision of the *Supreme Court of the United States in Barnett Bank of Marion County, N.A.* v. *Nelson, Florida, Florida Insurance Commissioner, et al.,* 517 U.S. 25 (1996).'').

[38] *See* 15 U.S.C. 6701(d)(2)(A).

[39] *Association of Banks in Insurance Inc.* v. *Duryee,* 270 F.3d 397, at 405, 408 (6th Cir. 2001).

[40] One commenter asserted that the Dodd-Frank Act expressly preserves only the OCC's rules concerning the law applicable to interest rates charged by national banks, and those applicable to prior contracts. This does not mean, however, that the 2004 preemption rules and precedents in other areas have become invalid. It is well settled that ''repeals by implication are not favored and will not be found unless an intent to repeal is 'clear and manifest.' '' *Rodriguez* v. *U.S.,* 480 U.S. 522, 524 (1987) (internal citations omitted). Rather, regulatory provisions and other precedents that are consistent with standards in the Dodd-Frank Act are preserved.

[41] As we noted in note 31, the colloquy between Senators Carper and Dodd clearly demonstrates that Congress did not intend to change the *Barnett* standard. But the final language in section 1044 could be read as a rejection of the ''obstruct, impair, or condition'' formulation used in the 2004 preemption rules.

[42] We decline commenters' request that we also delete this language from the OCC's bank operations rule at 12 CFR 7.4009 rather than eliminating the rule in its entirety. We have not had occasion to apply this rule to particular types of state laws and therefore its removal should not create uncertainty about the validity of prior precedent. The application of state consumer financial laws to national bank operations continues to be subject to a *Barnett* conflict preemption analysis.

[43] Under some circumstances, however, the preemptive effect of the former regulation could be preserved under Section 1043 of the Dodd-Frank Act. *See* Dodd-Frank Act, section 1043, 124 Stat. at 2014 (*to be codified* at 12 U.S.C. 5553). The OCC has not identified any OCC-issued preemption precedent that rested only on the ''obstruct, impair, or condition'' formulation.

[44] *See McCormick* v. *Wells Fargo Bank,* No. 3:08–0944, 2009 WL 151588, at *2 (S.D. W.Va. Jan 22, 2009).

[45] As noted by the Court in *Barnett,* these Federal powers granted national banks may be ''both enumerated and incidental.'' 517 U.S. at 32.

[46] *See* Dodd-Frank Act, section 1044(a), 124 Stat. at 2015 (*to be codified* at 12 U.S.C. 25b).

[47] The *Barnett* standard preemption provision of Dodd-Frank applies to questions concerning the applicability of state consumer financial laws to national banks; the principles of preemption articulated in the *Barnett* decision apply to

be a conflict that triggers preemption under the standard articulated in the *Barnett* decision.[48] As detailed below, the Dodd-Frank Act's case-by-case procedural requirement applicable to future determinations regarding preemption of state consumer financial laws allows categorical determinations where multiple state laws are identified. The Act defines ''case-by-case basis'' as a determination by the Comptroller as to the impact of a ''particular'' state consumer financial law on ''any national bank that is subject to that law'' or the law of any other state with substantively equivalent terms.

The types and terms of laws that are set out in the 2004 preemption rules were based on the OCC's experience with the potential impact of such laws on national bank powers and operations.[49] We have re-reviewed those rules in connection with this rulemaking to confirm that the specific types of laws cited in the rules are consistent with the standard for conflict preemption in the Supreme Court's *Barnett* decision.[50] For example, in the lending arena, based upon our assessment as the primary Federal supervisor of national banks, state laws that would affect the ability of national banks to underwrite and mitigate credit risk, manage credit risk exposures, and manage loan-related assets, such as laws concerning the protection of collateral value, credit enhancements, risk mitigation, loan-to-value standards, loan amortization and repayment requirements, circumstances when a loan may be called due and payable, escrow standards, use of credit reports to assess creditworthiness of borrowers, and origination, managing, and purchasing and selling extensions of credit or interests therein, would meaningfully interfere with fundamental and substantial elements of the business of national banks and with their responsibilities to manage that business and those risks.

Similarly, disclosure laws that impose requirements that predicate the exercise of national banks' deposit-taking or lending powers on compliance with state-dictated disclosure requirements clearly present a significant interference, within the meaning of *Barnett,* with the exercise of those national bank powers. This type of law falls squarely within the precedent recognized in the Supreme Court's *Barnett* decision, notably the *Franklin Nat'l Bank* decision specifically discussed and relied upon in *Barnett.*[51]

And state laws that would alter standards of a national bank's depository business—setting standards for permissible types and terms of accounts and for funds availability, similarly would significantly interfere with management of a core banking business. Moreover, the imposition of state-based standards on national banks' depository activities implicates aspects of a bank's overall risk management and funding strategies, including liquidity, interest rate risk exposure, funding management, and fraud prevention. State and local law directives or instructions affecting these areas are significant, within the meaning of *Barnett,* since they affect whether and how the bank may offer a core banking product and manage some of its most basic funding functions in operating a banking business.

Several commenters identified particular types of laws in the foregoing categories and explained how they impaired or otherwise burdened their operations. Those commenters also emphasized that to the extent that multiple states' requirements may be asserted, the significance of the interference is magnified. Based upon the OCC's supervisory experience, these concerns are valid.

d. Dodd-Frank Act Procedural and Consultation Requirements

Some commenters asserted that maintaining any of the preemption rules contravenes the new Dodd-Frank Act preemption procedures. These commenters contend that OCC can preempt only on a ''case-by-case basis'' if a ''particular'' state law, or an equivalent one, prevents or significantly interferes with the exercise of bank powers, after consultation with the CFPB. However, these provisions clearly apply to determinations made under the *Barnett* standard provisions of the Dodd-Frank Act that are not effective until July 21, 2011. Actions and regulations in effect prior to the effective date are not subject to the case-by-case requirement, but, as discussed above, the continued validity of those precedents applicable to state consumer financial laws is subject to the standards of section 1044(b)(1). *Future* preemption determinations would be subject to the new Dodd-Frank Act procedural provisions. Where Congress wanted to make wholesale changes to existing preemption standards, it clearly did so, as it did by eliminating field preemption for Federal thrifts and preemption for operating subsidiaries, and those standards operate prospectively.[52]

e. Visitorial Powers Amendments

As explained above, some commenters voiced concern about the proposed revision to the definition of visitorial powers at § 7.4000(a)(2)(iv) to include ''*[i]nvestigating* or enforcing compliance with any applicable Federal or state laws concerning those activities.'' This addition, consistent with the concept of visitation, was intended to include direct investigations of national banks such as through requests for documents or testimony directed to the bank to ascertain the bank's compliance with law through mechanisms not otherwise authorized under the rule. It would not include collecting information from other sources or from the bank through actions that do not constitute visitations or as authorized under Federal law. In response to commenters and to better reflect the *Cuomo* decision, we have revised the final rule to clarify this point.

Commenters also opined that the proposed definition does not reflect the authority of state attorneys general to

questions concerning the application of all types of state laws to national banks. Contrary to a few commenters' assertions, nothing in Dodd-Frank affects the OCC's authority to address preemption questions concerning laws other than ''state consumer financial laws.''

[48] This is in contrast to the OTS's preemption rules, which assert an ''occupation of the field'' preemption standard for Federal savings associations. *See, e.g.,* 12 CFR 557.11(b), 560.2(a).

[49] *Id.* at §§ 7.4007, 7.4008, 34.4; *see* 69 FR 1904, 1911 (Jan. 13, 2004) (final preemption rules); *see also* 68 FR 46119, 46128 (Aug. 5, 2003) (proposed preemption rules).

[50] We also have added a clarification in the final rule to specifically state that the OCC will use the *Barnett* standard for determining that state laws *are* applicable to national banks. This clarification does not effect any substantive change, but simply modifies the reference to state laws that are not preempted because they have only an insignificant effect upon national bank powers according to the *Barnett* conflict standard, notwithstanding the type of state law involved.

[51] *Barnett,* 517 U.S. at 33; *Franklin Nat'l Bank of Franklin Square* v. *New York,* 347 U.S. 373 (1954). *See also American Bankers Ass'n* v. *Lockyer,* 239 F. Supp. 2d 1000, 1014–1018 (E.D. Cal. 2002) (the monetary and non-monetary costs of a mandatory disclosure scheme constituted a significant interference with national banks' powers under the National Bank Act); *Rose* v. *Chase Bank, N.A.,* 513 F.3d 1032 (9th Cir. 2008) (a state may not by statute attach civil liability to the offer of convenience checks that do not carry state-mandated disclosures.) *Lockyer* and *Rose* cited and relied on the preemption standard in *Barnett.*

[52] *See* Dodd-Frank Act, sections 1046(a), 1044(a), 124 Stat. at 2017, 2015 (*to be codified* at 12 U.S.C. 1465, 25b). Earlier versions of the legislation would have had a retroactive impact by creating various new standards for preemption under the National Bank Act, invalidating an extensive body of national bank judicial, interpretive and regulatory preemption precedent. *See* H.R. 4173, 111th Cong. § 4404 (as passed by the House of Representatives on Dec. 11, 2009). The final version of the Dodd-Frank Act legislation enacted by Congress did not adopt this approach. *See, e.g., Landgraf* v. *USI Film Products,* 511 U.S. 244, 272–73 (1994) (recognizing presumption against retroactive legislation).

enforce certain Federal laws and certain regulations to be issued by the CFPB. We believe this authority is addressed in current § 7.4000(a)(3), which provides that the OCC has exclusive visitorial powers ''[u]nless otherwise provided by Federal law,'' and in § 7.4000(b)(1).

Finally, some commenters asserted that the phrase ''non-preempted state law'' used in the proposal could be interpreted more narrowly than the ''applicable law'' phrasing used in the Dodd-Frank Act. We intended the authority addressed in current § 7.4000(a)(3) in combination with the phrase ''non-preempted state law'' to have the result sought by these commenters, but we understand the commenters' concern regarding the clarity of this result. Accordingly, we have changed the language of the final rule to simply use the term ''applicable law.'' We note, however, that this is an exception from a prohibition of certain visitorial actions by an attorney general (or other chief state law enforcement officer), not an authorization. In the case of both non-preempted state law and Federal law, the law in question still must provide authority for the attorney general to enforce and seek relief as authorized under that applicable law.

5. Description of the Final Rule

For the reasons set forth in this preamble, the final rule amends provisions of the OCC's regulations relating to preemption (12 CFR 7.4007, 7.4008, 7.4009, and 34.4), operating subsidiaries (12 CFR 5.34 and 7.4006), and visitorial powers (12 CFR 7.4000) as follows:

- The final rule adds §§ 7.4010(a) and 34.6 to provide that Federal savings associations and their subsidiaries are subject to the same laws and legal standards, including OCC regulations, as are applicable to national banks and their subsidiaries regarding the preemption of state law. The final rule also adds § 7.4010(b) to subject Federal savings associations and their subsidiaries to the same visitorial powers provisions in the Dodd-Frank Act that apply to national banks and their subsidiaries.
- The final rule makes conforming changes to §§ 7.4007, 7.4008, and 34.4. It revises paragraphs (b) in § 7.4007, (d) in § 7.4008, and (a) in § 34.4 by removing ''state laws that obstruct, impair, or condition a national bank's ability to fully exercise its Federally authorized * * * powers are not applicable to national banks.'' The final rule further clarifies that a state law is *not* preempted to the extent consistent with the *Barnett* decision.
- The final rule deletes § 7.4009.
- The final rule deletes § 7.4006, which governs applicability of state laws to national bank operating subsidiaries. The final rule also makes conforming revisions to 12 CFR 5.34(a) and paragraph (e)(3) by expressly referencing the new section 12 U.S.C. 25b adopted by the Dodd-Frank Act.
- The final rule makes a number of changes to § 7.4000 to conform the regulations to the Supreme Court's decision in the *Cuomo* case as adopted by the Dodd-Frank Act. First, it adds a reference to 12 U.S.C. 484 in § 7.4000(a)(1). Second, it revises paragraph (a)(2)(iv) to read ''[e]nforcing compliance with any applicable Federal or state laws concerning those activities, including through investigations that seek to ascertain compliance through production of non-public information by the bank, except as otherwise provided in paragraphs (a), (b) and (c).'' Third, it adds a new paragraph (b), which specifically provides that ''[i]n accordance with the decision of the Supreme Court in *Cuomo* v. *Clearing House Assn., L.L.C.,* 129 S. Ct. 2710 (2009), an action against a national bank in a court of appropriate jurisdiction brought by a state attorney general (or other chief law enforcement officer) to enforce an applicable law against a national bank and to seek relief as authorized by such law is not an exercise of visitorial powers under 12 U.S.C. 484.'' Fourth, it redesignates paragraphs (b) and (c) as new paragraphs (c) and (d) and makes conforming revisions to § 7.4000(c)(2), which provides an exception from the general rule in § 7.4000(a)(1) for such visitorial powers as are vested in the courts of justice.

We did not propose changes to 12 CFR 7.4002, 34.21, and 37.1 and therefore make no changes to these provisions in this final rule. However, we agree with commenters that these rules remain in effect.

D. Assessments (Part 8)

1. Background

The Dodd-Frank Act transfers authority to collect assessments for Federal savings associations from the OTS to the OCC.[53] This authority is effective as of the transfer date, July 21, 2011.[54] The Dodd-Frank Act also provides that, in establishing the amount of an assessment, the Comptroller may consider the nature and scope of the activities of the entity, the amount and type of assets it holds, the financial and managerial condition of the entity, and any other factor that is appropriate.[55]

Prior to the transfer date, the OCC and the OTS assessed banks and savings associations, respectively, using different methodologies, although the agencies' methodologies generally resulted in similar levels of assessments. Under the OTS assessment system, assessments were due each year on January 31 and July 31, and were calculated based on an institution's asset size, condition, and complexity.[56] The asset size component of the assessment was calculated using a table and formula contained in the OTS's regulation.[57] The OTS set specific rates that apply to the table through a Thrift Bulletin on assessments and fees.[58]

The condition component in the OTS's regulation applied to savings associations with Uniform Financial Institutions Rating System (UFIRS) ratings of 3, 4, or 5. The condition surcharge is determined by multiplying a savings association's size component by 50%, in the case of any association that receives a composite UFIRS rating of 3, and 100% in the case of any association that receives a composite UFIRS rating of 4 or 5. Under the OTS regulation, there was no cap on the condition surcharge.

The assessment for complexity was based on a savings association's trust assets and on certain non-trust assets. The OTS charged a complexity component for trust assets if a savings association had more than $1 billion in one of three components: trust assets managed by the savings association, the outstanding principal balance of assets that are covered by recourse obligations or direct credit substitutes, and the principal amount of loans that the institution services for others. The OTS charged the complexity component for these categories of assets above $1 billion under tiers and rates set out in a Thrift Bulletin.

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[53] *See* Dodd-Frank Act, section 318(b), 124 Stat. at 1526–1527 (*to be codified* at 12 U.S.C. 16) (authorizing the Comptroller to collect assessments, fees, or other charges from entities for which it is the appropriate Federal banking agency). *See also id.* at section 312(c), 124 Stat. at 1522 (*to be codified* at 12 U.S.C. 1813) (amending the Federal Deposit Insurance Act to designate the OCC as the appropriate Federal banking agency for Federal savings associations); section 369, 124 Stat. at 1563 (*to be codified* at 12 U.S.C. 1467) (amending the HOLA to authorize the Comptroller to assess savings associations and affiliates of savings associations for the cost of examinations as the Comptroller ''deems necessary or appropriate'').

[54] *Id.* at section 312(a), 124 Stat. at 1521 (*to be codified* at 12 U.S.C. 5412).

[55] *Id.* at section 318(b), 124 Stat. at 1526–1527 (*to be codified* at 12 U.S.C. 16).

[56] 12 CFR part 502.

[57] *Id.* at § 502.20.

[58] Thrift Bulletin 48–29 (Dec. 2, 2010).

If a savings association administers trust assets of $1 billion or less, the OTS could assess fees for its examinations and investigations of those institutions. The OTS also could assess a savings association for examination or investigation of its affiliates. Again, these fees were set in a Thrift Bulletin.

Under the OCC's assessment regulation, set forth at 12 CFR part 8, assessments for each national bank are due on March 31 and September 30 of each year.[59] The semiannual assessment for each national bank is based on an institution's asset size and is calculated using a table and formula in the OCC's regulation.[60] The OCC sets the specific rates for the table each year in the Notice of Comptroller of the Currency Fees (Notice of Fees).[61] The OCC may provide a reduced semiannual assessment for each non-lead bank within a bank holding company.[62]

In addition to the semiannual assessment, the OCC applies a separate assessment for its examination of ''independent credit card banks'' and ''independent trust banks.'' [63] A bank is an independent credit card bank if it engages primarily in credit card operations and is not affiliated with a full-service national bank.[64] The assessment is based on ''receivables attributable,'' defined as the total amount of outstanding balances due on credit card accounts owned by the bank (the receivables attributable to those accounts), minus receivables retained on the bank's balance sheet.

An ''independent trust bank'' is a national bank with trust powers that has fiduciary and related assets, does not primarily offer full-service banking, and is not affiliated with a full-service national bank.[65] The independent trust assessment is made up of a minimum amount, set in the Notice of Fees, and an additional amount for banks with over $1 billion in fiduciary and related assets. The specific rate applicable to fiduciary and related assets above $1 billion is also set in the annual Notice of Fees.

The OCC applies a condition-based surcharge to the semiannual assessment of national banks.[66] The condition surcharge applies to national banks with UFIRS ratings of 3, 4, or 5. The condition surcharge is determined by multiplying the general semiannual assessment by 1.5, in the case of any national bank that receives a composite UFIRS rating of 3, and 2.0 in the case of any national bank that receives a composite UFIRS rating of 4 or 5. The condition surcharge is assessed against, and limited to, the first $20 billion of a national bank's book assets.

2. Description of the Final Rule

The OCC received two comments concerning the proposed changes to part 8 and the assessment of savings association, both supporting the proposal's approach to integrating savings associations into the OCC's assessment structure. The OCC is adopting the final rule as proposed.

The final rule amends part 8 to assess Federal savings associations using the same methodologies, rates, fees, and payment due dates that apply currently to national banks. The OTS's existing assessment regulation is no longer in effect and will be repealed at a later date. As a result, the next assessment for savings associations will occur in September 2011, and not July 2011.

Under the OCC's assessment system, some savings associations will pay marginally more assessments than in the past, while others will pay lower assessments. However, during the first two assessment cycles after the transfer date, the OCC will base savings association assessments on either the OCC's assessment regulation (as amended to include Federal savings associations) or the former OTS assessment structure, whichever yields the lower assessment for that savings association. After the March 2012 assessment, all national banks and Federal savings associations will be assessed using the OCC's assessment structure. The OCC intends to implement this phase-in through an amended Notice of Fees. The OCC believes that this phase-in will allow savings associations sufficient time to adjust to the OCC's assessment program.

One commenter suggested that the OCC add the phase-in period for Federal savings associations to the regulatory text. The OCC believes that the amended Notice of Fees discussed above, as well as the discussion of the phase-in included in the proposed rule and this preamble, provide sufficient guidance to Federal savings associations concerning the OCC's intention to delay application of higher assessments for affected Federal savings associations for two assessment cycles. Given the temporary nature of the phase-in, we decline to include a reference to the phase-in period in the regulatory text.

This commenter also suggested that the OCC provide an alternate assessment statement to Federal savings associations to show savings associations what the assessment would have been under the OCC's assessment structure, had it been applied. The commenter stated that this will assist those Federal savings associations that will pay marginally more under the OCC's assessment structure better prepare for the shift to OCC assessments in 2012. We agree that such notice would be helpful and plan to notify those Federal savings associations that will pay a lower assessment during the phase-in of the amount their assessments would have been under the OCC's assessment structure.

The final rule also implements section 605(a) of the Dodd-Frank Act, which provides the OCC (and other appropriate Federal banking agencies) with authority to conduct examinations of depository-institution permissible activities of nondepository institution subsidiaries of depository institution holding companies. Section 605 provides specific authority for the OCC and other regulators to assess such nondepository institution subsidiaries for the costs of examination. The final rule implements this new statutory assessment authority.

V. Effective Date

This final rule is effective on July 21, 2011, except as noted in the **DATES** section. A final rule may be published with an effective date that is less than 30 days from publication if an agency finds good cause and publishes such with the final rule.[67] The purpose of a delayed effective date is to permit regulated entities to adjust their behavior before the final rule takes effect. As described above, the OCC is amending its rules to implement various provisions of the Dodd-Frank Act,

[59] Part 8 contains parallel assessment rules for Federal branches and agencies.

[60] 12 CFR 8.2(b).

[61] Notice of Comptroller of the Currency Fees for Year 2011 (Dec. 1, 2010), *available at http://www.occ.gov/news-issuances/bulletins/2010/bulletin-2010-41.html.*

[62] A ''lead bank'' is defined in the OCC's regulation as the largest national bank controlled by a company based on the total assets held by each national bank controlled by that company. 12 CFR 8.2(a)(6)(ii)(A). A ''non-lead bank'' means a national bank that is not the lead bank controlled by a company that controls two or more national banks. *Id.* at § 8.2(a)(6)(ii)(B). The percentage of the discount for non-lead banks is set in the annual Notice of Fees.

[63] *Id.* at §§ 8.2(c), 8.6(c). The OCC also assesses a fee for special examinations and investigations, such as special examinations and investigations of affiliates of national banks. *Id.* at § 8.6.

[64] A ''full service national bank'' is defined as a bank that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of permissible banking activities. *Id.* at §§ 8.2(c)(3)(iii), 8.6(c)(3)(ii).

[65] *Id.* at § 8.6(c)(3)(iii).

[66] *Id.* at § 8.2(d).

[67] 5 U.S.C. 553(d)(3).

including the Act's transfer of functions of the OTS to the OCC, the Act's provisions regarding preemption and visitorial powers, and the Act's amendments relating to the change in control of credit card banks and trust banks and deposit-taking by uninsured Federal branches. The changes relating to the transfer of the OTS's functions to the OCC are essential to facilitating a seamless transition when the OCC assumes responsibility for supervising Federal savings associations on the transfer date (July 21, 2011) and must be in effect on that date in order to ensure that the appropriate regulatory structure is in place. Specifically with regard to the preemption and visitorial powers rules, it is important for the industry to have guidance by the effective date of the relevant Dodd-Frank Act amendments, July 21, 2011. Finally, the amendments relating to the change in control of credit card banks and trust banks and deposit-taking by uninsured Federal branches simply implement statutory changes made effective upon the enactment of the Dodd-Frank Act on July 21, 2010. For these reasons, the OCC finds good cause to dispense with a delayed effective date.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4802) (RCDRIA) requires that regulations imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of the calendar quarter after publication of the final rule, unless, among other things, the agency determines for good cause that the regulations should become effective before such time. The RCDRIA does not apply to the amendments to parts 4, 5, 7, 8, 28 and 34 of this final rule because these amendments do not impose any additional reporting, disclosure, or other requirements.

VI. Regulatory Analysis

1. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule. We have concluded that the final rule does not have a significant economic impact on a substantial number of small entities currently supervised by the OCC (*i.e.,* national banks and Federal branches and agencies of foreign banks). In addition, although the final rule will directly affect all Federal savings associations, we have concluded that it does not have a significant economic impact on a substantial number of small Federal savings associations. Specifically, the amendments to part 4 do not contain new compliance requirements. Any costs that may be associated with integrating the functions of the two agencies, and other changes to part 4, will be borne by the OCC. In addition, there are no costs directly associated with the amendments to 12 CFR 5.50(f) and part 28, implementing sections 603 and 335 of the Dodd-Frank Act, respectively, or with the amendments necessary to apply national bank preemption standards to Federal savings associations. Furthermore, we have determined that the amendments to the preemption and visitorial powers provisions affecting national banks will not have a significant economic impact on a substantial number of small entities. Lastly, although the amendments to part 8, assessments, will economically impact a substantial number of small savings associations, this impact will not be significant. Therefore, pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a final regulatory flexibility analysis is not needed.

2. Paperwork Reduction Act

The rule contains several currently approved collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).[68] The amendments adopted today do not introduce any new collections of information into the rules, nor do they amend the rules in a way that substantively modifies the collections of information that OMB has approved. Therefore, no PRA submissions to OMB are required, with the exception of non-substantive submissions to OMB to adjust the number of respondents.

3. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may 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. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by state, local, and Tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act.

[68] *See* OMB Control Nos. 1557–0014, 1557–0200 and 1557–0223.

List of Subjects

12 CFR Part 4

National banks, Savings associations, Organization and functions, Reporting and recordkeeping requirements, Administrative practice and procedure, Freedom of Information Act, Records, Non-public information, Post-employment activities.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Computer technology, Credit, Insurance, Investments, National banks, Savings associations, reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 8

National banks, Savings associations, Reporting and recordkeeping requirements.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Savings associations, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS

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

Authority: 12 U.S.C. 1, 12 U.S.C. 93a, 12 U.S.C. 5321, 12 U.S.C. 5412, and 12 U.S.C. 5414. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a)(2) and (3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p–1, 1831o, 1867, 1951 *et seq.,* 2601 *et seq.,* 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.;* 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e. Subpart E is also issued under 12 U.S.C. 1820(k).

■ 2. Revise § 4.2 to read as follows:

§ 4.2 Office of the Comptroller of the Currency.

The OCC is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction. The OCC examines, supervises, and regulates national banks, Federal branches and agencies of foreign banks, and Federal savings associations to carry out this mission. The OCC also issues rules and regulations applicable to state savings associations.

§ 4.3 [Amended]

■ 3. Amend § 4.3 in the third sentence by adding ''a member of the Financial Stability Oversight Council,'' after ''Federal Deposit Insurance Corporation,''.

■ 4. Revise § 4.4 to read as follows:

§ 4.4 Washington office and Web site.

The Washington office of the OCC is the main office and headquarters of the OCC. The Washington office directs OCC policy, oversees OCC operations, and is responsible for the direct supervision of certain national banks and Federal savings associations, including the largest national banks and the largest Federal savings associations (through the Large Bank Supervision Department); other national banks and Federal savings associations requiring special supervision; and Federal branches and agencies of foreign banks (through the Large Bank Supervision Department). The Washington office is located at 250 E Street, SW., Washington, DC 20219. The OCC's Web site is at *http://www.occ.gov.*

■ 5. Amend § 4.5 by:

■ a. Revising paragraph (a); and

■ b. In paragraph (b), adding ''and savings association'' after ''support the bank''.

The revision reads as follows:

§ 4.5 District and field offices.

(a) *District offices.* Each district office of the OCC is responsible for the direct supervision of the national banks and Federal savings associations in its district, with the exception of the national banks and Federal savings associations supervised by the Washington office. The four district offices cover the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. The office address and the geographical composition of each district follows:

District	Office address	Geographical composition
Northeastern District	Office of the Comptroller of the Currency, 340 Madison Avenue, 5th Floor, New York, NY 10173–0002.	Connecticut, Delaware, District of Columbia, northeast Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, the Virgin Islands, Virginia, and West Virginia.
Central District	Office of the Comptroller of the Currency, One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605.	Illinois, Indiana, central and southern Kentucky, Michigan, Minnesota, eastern Missouri, North Dakota, Ohio, and Wisconsin.
Southern District	Office of the Comptroller of the Currency, 500 North Akard Street, Suite 1600, Dallas, TX 75201.	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.
Western District	Office of the Comptroller of the Currency, 1225 17th Street, Suite 300, Denver, CO 80202.	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, western Missouri, Montana, Nebraska, Nevada, New Mexico, Northern Mariana Islands, Oregon, South Dakota, Utah, Washington, Wyoming, and Guam.

* * * * *

■ 6. Amend § 4.6 by:

■ a. Revising the section heading;

■ b. In paragraph (a):

■ i. Adding in the first sentence ''and Federal savings associations'' after ''examines national banks''; ''(with respect to national banks) and 1463(a)(1) and 1464 (with respect to Federal savings associations)'' after ''12 U.S.C. 481''; and ''(with respect to national banks and Federal savings associations)'' after ''12 U.S.C. 1820(d)'';

■ ii. Adding in the second sentence ''and Federal savings association'' after ''every national bank''.

■ c. In paragraph (b):

■ i. Adding in the introductory text ''or a Federal savings association'' after ''a national bank'';

■ ii. Adding in paragraphs (b)(1), (b)(2), (b)(4), and (b)(5) ''or Federal savings association'' after ''bank'' each time it appears; and

■ iii. In paragraph (b)(3) removing '', the OCC'' in the introductory text and revising paragraphs (b)(3)(i) and (b)(3)(ii); and

■ iv. In paragraph (b)(4), adding '', OTS'' after ''OCC''.

■ d. In paragraph (c), adding ''or Federal savings association'' after ''national bank''.

The revisions read as follows:

§ 4.6 Frequency of examination of national banks and Federal savings associations.

* * * * *

(b) * * *

(3) * * *

(i) The bank or Federal savings association was assigned a rating of 1 or 2 for management as part of the bank's or association's rating under the Uniform Financial Institutions Rating System; and

(ii) The bank or Federal savings association was assigned a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System.

* * * * *

§ 4.7 [Amended]

■ 7. In paragraph (a) of § 4.7, remove the phrase ''(h) and (i)'' and add in its place ''(g) and (h)''.

■ 8. Amend § 4.11 by:

■ a. In paragraph (a), removing ''industry'' and adding in its place ''and savings association industries'' after the word ''banking'';

■ b. Adding paragraph (b)(4).

The addition reads as follows:

§ 4.11 Purpose and scope.

* * * * *

(b) * * *

(4) This subpart does not apply to FOIA requests filed with the Office of Thrift Supervision (OTS) before July 21, 2011. These requests are subject to the rules of the OTS in effect on July 20, 2011.

■ 9. Amend § 4.12 by:

■ a. Removing ''and'' at the end of paragraph (b)(8) and removing the period and adding ''; and'' at the end of paragraph (b)(9); and

■ b. Adding paragraph (10).

The addition reads as follows:

§ 4.12 Information available under the FOIA.

* * * * *

(b) * * *

(10) Any OTS information similar to that listed in paragraphs (b)(1) through (9) of this section, to the extent this information is in the possession of the OCC.

■ 10. Amend § 4.14 by:

■ a. Adding in paragraph (a)(7), footnote 1, first sentence, ''and Federal savings associations'' after ''banks'' and removing '', such as the Consolidated Report of Condition and Income (FFIEC 031–034),'';

■ b. Removing the phrase ''part 11 or 16'' in paragraph (a)(9) and adding in its place the phrase ''parts 11, 16, 194 or 197'';

■ c. Removing ''and'' at the end of paragraph (a)(10);

■ d. Removing the period at the end of paragraph (a)(11) and adding in its place ''; and'';

■ e. Adding paragraph (a)(12); and

■ f. Revising paragraph (c).

The additions and revision read as follows:

§ 4.14 Public inspection and copying.

(a) * * *

(12) Any OTS information similar to that listed in paragraphs (a)(1) through (a)(12) of this section, to the extent this information is in the possession of the OCC.

* * * * *

(c) *Addresses.* The information described in paragraphs (a)(1) through (10) and (a)(11) of this section is available from the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. The information described in paragraph (a)(11) of this section in the case of both banks and Federal savings associations is available from the Licensing Manager at the appropriate district office at the address listed in § 4.5(a), or in the case of banks and savings associations supervised by Large Bank Supervision, from the Large Bank Licensing Expert, Licensing Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

§ 4.15 [Amended]

■ 11. Amend § 4.15 by:

■ a. Adding in paragraph (b)(1) ''through the OCC's FOIA Web portal at *https://appsec.occ.gov/publicaccesslink/palMain.aspx* or'' after ''must submit the request or appeal''; and

■ b. Removing in paragraph (c)(2) ''OCC's Director of Communications or that person's'' and adding in its place ''Comptroller or the Comptroller's''.

§ 4.16 [Amended]

■ 12. Amend § 4.16:

■ a. In paragraph (b)(1)(i) introductory text by adding ''or to the Federal Home Loan Bank Board, the predecessor of the OTS,'' after ''OCC'';

■ b. In paragraph (b)(1)(i)(C) by removing ''OCC'' and adding ''from the OCC or the Federal Home Loan Bank Board, the predecessor of the OTS'' after ''confidentiality'';

■ c. In paragraph (b)(1)(ii) introductory text by adding ''or to the OTS (or the Federal Home Loan Bank Board, its predecessor agency)'' after ''OCC'';

■ d. In paragraph (b)(1)(ii)(B) by adding ''or the OTS (or the Federal Home Loan Bank Board, its predecessor agency)'' after ''OCC''; and

■ e. In paragraph (b)(2)(iv) by adding ''or the OTS (or the Federal Home Loan Bank Board, its predecessor agency)'' after ''OCC''.

■ 13. Revise § 4.18 to read as follows:

§ 4.18 How to track a FOIA request.

(a) *Tracking number.* (1) *Internet requests.* The OCC will issue a tracking number to all FOIA requesters automatically upon receipt of the request (as described in § 4.15(g)) by the OCC's Communications Department via the OCC's Freedom of Information Request Portal, *https://appsec.occ.gov/publicaccesslink/palMain.aspx.* The tracking number will be sent via electronic mail to the requester.

(2) *If a requester does not have Internet access.* The OCC will issue a tracking number to FOIA requesters without Internet access within 5 days of the receipt of the request (as described in § 4.15(g)) in the OCC's Communications Department. The OCC will mail the tracking number to the requester's physical address, as provided in the FOIA request.

(b) *Status of request.* FOIA requesters may track the progress of their requests via the OCC's Freedom of Information Request Portal, *https://appsec.occ.gov/publicaccesslink/palMain.aspx.* Requesters without Internet access may continue to contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, at (202) 874–4700 to check the status of their FOIA request(s).

■ 14. Amend § 4.31 by:

■ a. Adding in paragraph (a)(5) ''Federal savings associations,'' after ''national banks,'';

■ b. Adding in paragraph (b)(3) ''or state savings association'' after ''state bank''; and

■ c. Adding paragraph (b)(5).

The addition reads as follows:

§ 4.31 Purpose and scope.

* * * * *

(b) * * *

(5) This subpart does not apply to requests for non-public information filed with the Office of Thrift Supervision (OTS) before July 21, 2011. These requests are subject to the rules of the OTS in effect on July 20, 2011.

■ 15. Amend § 4.32 by:

■ a. Revising paragraph (b)(1)(i);

■ b. In paragraph (b)(1)(ii) adding ''or the OTS'' after ''OCC'', removing ''the OCC's'', and adding ''either agency's'' after ''with'';

■ c. Adding in paragraph (b)(1)(iii) ''or OTS'' after ''compiled by the OCC'';

■ d. Revising paragraph (b)(1)(v);

■ e. Adding in paragraph (b)(1)(vi) '', Federal savings associations, and savings and loan holding companies'' after ''national banks'';

■ f. Removing the second sentence in paragraph (b)(2); and

■ g. Revising paragraph (e).

The revisions read as follows:

§ 4.32 Definitions.

* * * * *

(b) * * *

(1) * * *

(i) A record created or obtained:

(A) By the OCC in connection with the OCC's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a national bank, a Federal savings

association, a bank holding company, a savings and loan holding company, or an affiliate; or

(B) By the OTS in connection with the OTS's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a Federal savings association, a savings and loan holding company, or an affiliate;

* * * * *

(v) Testimony from, or an interview with, a current or former OCC employee, officer, or agent or a former OTS employee, officer, or agent concerning information acquired by that person in the course of his or her performance of official duties with the OCC or OTS or due to that person's official status at the OCC or OTS; and

* * * * *

(e) *Supervised entity* includes a national bank or Federal savings association, a subsidiary of a national bank or Federal savings association, or a Federal branch or agency of a foreign bank licensed by the OCC as defined under 12 CFR 28.11(g) and (h), or any other entity supervised by the OCC.

* * * * *

■ 16. Revise § 4.35(a)(5) to read as follows:

§ 4.35 Consideration of requests.

(a) * * *

(5) *Notice to subject national banks and Federal savings associations.* Following receipt of a request for non-public OCC information, the OCC generally notifies the national bank or Federal savings association that is the subject of the requested information, unless the OCC, in its discretion, determines that to do so would advantage or prejudice any of the parties in the matter at issue.

* * * * *

■ 17. Amend § 4.37 by:

■ a. In paragraph (a):

■ i. Adding in the paragraph heading ''; former OTS employees or agents'' after ''former OCC employees or agents'';

■ ii. Adding ''or former OTS employee or agent,'' after ''former OCC employee or agent'' each time that phrase appears;

■ iii. Adding at the end of paragraph (a)(2)(ii), ''and former OTS employees or agents'';

■ b. In paragraph (b):

■ i. Adding in paragraph (b)(1)(i) introductory text ''Federal savings association,'' after ''national bank,'';

■ ii. Revising paragraph (b)(2) introductory text;

■ iii. Adding at the end of paragraph (b)(2)(ii) ''or Federal savings association'';

■ iv. Adding in paragraph (b)(3) introductory text ''Federal savings association,'' after ''national bank,''; and

■ c. In paragraph (c), adding in the first sentence ''and state savings association'' after ''state bank''.

The revision reads as follows:

§ 4.37 Persons and entities with access to OCC information; prohibition on dissemination.

* * * * *

(b) * * *

(2) *Exception for national banks and Federal savings associations.* When necessary or appropriate for business purposes, a national bank, Federal savings association, or holding company, or any director, officer, or employee thereof, may disclose non-public OCC information, including information contained in, or related to, OCC reports of examination, to a person or organization officially connected with the bank or Federal savings association as officer, director, employee, attorney, auditor, or independent auditor. A national bank, Federal savings association, or holding company or a director, officer, or employee thereof, may also release non-public OCC information to a consultant under this paragraph if the consultant is under a written contract to provide services to the bank or Federal savings association and the consultant has a written agreement with the bank or Federal savings association in which the consultant:

* * * * *

§ 4.39 [Amended]

■ 18. In § 4.39(a), add ''OCC or OTS'' after ''former''.

Appendix A to Subpart C of Part 4 [Amended]

■ 19. In Appendix A to subpart C of part 4:

■ a. In I. Model Stipulation, second paragraph, add '', 1463(a)(1), 1464(a)(1), and 1464(d)(1)(B)(i)'' after 12 U.S.C. 481''; and

■ b. In II. Model Protective Order, add '', 1463(a)(1), 1464(a)(1), and 1464(d)(1)(B)(i)'' after 12 U.S.C. 481'' in the second paragraph.

■ 20. Amend § 4.73 by:

■ a. In the definition of ''Consultant'':

■ i. Adding ''savings association,'' after ''national bank,'';

■ ii. Adding ''savings and loan holding company,'' after ''bank holding company,'' each time it appears; and

■ iii. Adding ''savings association,'' after ''such bank,'';

■ b. In the definition of ''Control'' adding ''or in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a), as applicable under the circumstances'' after ''1841(a))'';

■ c. Adding definitions of ''Savings association'' and ''Savings and loan holding company'' in alphabetical order; and

■ d. Revising the definition of ''*Senior examiner*''.

The additions and revision read as follows:

§ 4.73 Definitions.

* * * * *

Savings association has the meaning given in section 3 of the FDI Act (12 U.S.C. 1813(b)(1)).

Savings and loan holding company means any company that controls a savings association or any other company that is a savings and loan holding company (as provided in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a)).

Senior examiner. For purposes of this subpart, an officer or employee of the OCC is considered to be the ''senior examiner'' for a particular national bank or savings association if—

(1) The officer or employee has been authorized by the OCC to conduct examinations on behalf of the OCC or had been authorized by the Office of Thrift Supervision (OTS) to conduct examinations on behalf of the OTS;

(2) The officer or employee has been assigned continuing, broad, and lead responsibility for examining the national bank or savings association; and

(3) The officer's or employee's responsibilities for examining the national bank or savings association—

(i) Represent a substantial portion of the officer's or employee's assigned responsibilities; and

(ii) Require the officer or employee to interact routinely with officers or employees of the national bank or savings association, or its affiliates.

■ 21. Effective July 21, 2012, in § 4.73, revise the definition of *Senior examiner* to read as follows:

§ 4.73 Definitions.

* * * * *

Senior examiner. For purposes of this subpart, an officer or employee of the OCC is considered to be the ''senior examiner'' for a particular national bank or savings association if—

(1) The officer or employee has been authorized by the OCC to conduct examinations on behalf of the OCC;

(2) The officer or employee has been assigned continuing, broad, and lead responsibility for examining the national bank or savings association; and

(3) The officer's or employee's responsibilities for examining the national bank or savings association—

(i) Represent a substantial portion of the officer's or employee's assigned responsibilities; and

(ii) Require the officer or employee to interact routinely with officers or employees of the national bank or savings association, or its affiliates.''

■ 22. Revise § 4.74 to read as follows:

§ 4.74 One-year post-employment restrictions.

An officer or employee of the OCC who serves, or former officer or employee of the OTS who served, as the senior examiner of a national bank or savings association for two or more months during the last twelve months of such individual's employment with the OCC or OTS may not, within one year after leaving the employment of the OCC or OTS, knowingly accept compensation as an employee, officer, director or consultant from the national bank, savings association, or any company (including a bank holding company or savings and loan holding company) that controls the national bank or savings association.

■ 23. Effective July 21, 2012, revise § 4.74 to read as follows:

§ 4.74 One-year post-employment restrictions.

An officer or employee of the OCC who serves as the senior examiner of a national bank or savings association for two or more months during the last twelve months of such individual's employment with the OCC may not, within one year after leaving the employment of the OCC, knowingly accept compensation as an employee, officer, director or consultant from the national bank, savings association, or any company (including a bank holding company or savings and loan holding company) that controls the national bank or savings association.

■ 24. Revise § 4.75 to read as follows:

§ 4.75 Waivers.

The post-employment restrictions set forth in section 10(k) of the FDI Act (12 U.S.C. 1820(k)) and § 4.74 do not apply to any officer or employee of the OCC, or any former officer or employee of the OCC or OTS, if the Comptroller of the Currency certifies, in writing and on a case-by-case basis, that granting the individual a waiver of the restrictions would not affect the integrity of the OCC's supervisory program.

■ 25. Effective July 21, 2012, revise § 4.75 to read as follows:

§ 4.75 Waivers.

The post-employment restrictions set forth in section 10(k) of the FDI Act (12 U.S.C. 1820(k)) and § 4.74 do not apply to any officer or employee of the OCC, or any former officer or employee of the OCC, if the Comptroller of the Currency certifies, in writing and on a case-by-case basis, that granting the individual a waiver of the restrictions would not affect the integrity of the OCC's supervisory program.

■ 26. Amend § 4.76 by revising paragraph (a) to read as follows:

§ 4.76 Penalties.

(a) *Penalties under section 10(k) of FDI Act (12 U.S.C. 1820(k)).* If a senior examiner of a national bank or savings association, after leaving the employment of the OCC or OTS, accepts compensation as an employee, officer, director, or consultant from that bank, savings association, or any company (including a bank holding company or savings and loan holding company) that controls that bank or savings association in violation of § 4.74, then the examiner shall, in accordance with section 10(k)(6) of the FDI Act (12 U.S.C. 1820(k)(6)), be subject to one of the following penalties—

(1) An order—

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant national bank, savings association, bank holding company, savings and loan holding company, or other company that controls such institution for a period of up to five years; and

(ii) Prohibiting the individual from participating in the affairs of any insured depository institution for a period of up to five years; or

(2) A civil monetary penalty of not more than $250,000.

* * * * *

■ 27. Effective July 21, 2012, amend § 4.76 by revising paragraph (a) to read as follows:

§ 4.76 Penalties.

(a) *Penalties under section 10(k) of FDI Act (12 U.S.C. 1820(k)).* If a senior examiner of a national bank or savings association, after leaving the employment of the OCC, accepts compensation as an employee, officer, director, or consultant from that bank, savings association, or any company (including a bank holding company or savings and loan holding company) that controls that bank or savings association in violation of § 4.74, then the examiner shall, in accordance with section 10(k)(6) of the FDI Act (12 U.S.C. 1820(k)(6)), be subject to one of the following penalties—

(1) An order—

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant national bank, savings association, bank holding company, savings and loan holding company, or other company that controls such institution for a period of up to five years; and

(ii) Prohibiting the individual from participating in the affairs of any insured depository institution for a period of up to five years; or

(2) A civil monetary penalty of not more than $250,000.

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 28. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 215a–2, 215a–3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

■ 29. Amend § 5.34 by revising paragraph (a) and the first sentence of paragraph (e)(3) to read as follows:

§ 5.34 Operating subsidiaries.

(a) * * *

Authority. 12 U.S.C. 24 (Seventh), 24a, 25b, 93a, 3101 *et seq.*

* * * * *

(e) * * *

(3) *Examination and supervision.* An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent national bank, except as otherwise provided with respect to the application of state law under sections 1044(e) and 1045 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b). * * *

* * * * *

■ 30. Amend § 5.50 by redesignating paragraph (f)(6) as paragraph (f)(7) and adding a new paragraph (f)(6) to read as follows:

§ 5.50 Change in bank control; reporting of stock loans.

* * * * *

(f) * * *

(6) *Disapproval of notice involving credit card banks or trust banks.* (i) *In general.* The OCC shall disapprove a notice if the proposed change in control occurs before July 21, 2013 and would result in the direct or indirect control of a credit card bank or trust bank, as

defined in section 2(c)(2)(F) and (D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F) and (D)), by a commercial firm. For purposes of this paragraph a company is a ''commercial firm'' if the annual gross revenues derived by the company and all of its affiliates from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) and, if applicable, from the ownership or control of one or more insured depository institutions, represent less than 15 percent of the consolidated annual gross revenues of the company.

(ii) *Exception to disapproval.* Paragraph (f)(6)(i) of this section shall not apply to a proposed change in control of a credit card bank or trust bank that:

(A)(*1*) Is in danger of default, as determined by the OCC;

(*2*) Results from the merger or whole acquisition of a commercial firm that directly or indirectly controls the credit card bank or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the OCC; or

(*3*) Results from the acquisition of voting shares of a publicly traded company that controls a credit card bank or trust bank, if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert) holds less than 25 percent of any class of the voting shares of the company; and

(B) Has obtained all regulatory approvals otherwise required for such change of control under any applicable Federal or state law, including review pursuant to section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) and 12 CFR 5.50.

* * * * *

§ 5.50 [Amended]

■ 31. Effective July 21, 2013, amend § 5.50 by removing paragraph (f)(6) and redesignating paragraph (f)(7) as paragraph (f)(6).

PART 7—BANK ACTIVITIES AND OPERATIONS

■ 32. The authority citation for part 7 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 71, 71a, 92, 92a, 93, 93a, 371, 371a, 481, 484, 1465, 1818 and 5412(b)(2)(B).

Subpart D—Preemption

■ 33. Amend § 7.4000 by:
■ a. Revising the first sentence of paragraph (a)(1);
■ b. Revising paragraph (a)(2)(iv);
■ c. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;
■ d. Adding a new paragraph (b); and
■ e. Revising newly designated paragraph (c)(2).

The additions and revisions read as follows:

§ 7.4000 Visitorial powers.

(a) * * *

(1) Under 12 U.S.C. 484, only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks. * * *

(2) * * *

(iv) Enforcing compliance with any applicable Federal or state laws concerning those activities, including through investigations that seek to ascertain compliance through production of non-public information by the bank, except as otherwise provided in paragraphs (a), (b), and (c) of this section.

* * * * *

(b) *Exclusion.* In accordance with the decision of the Supreme Court in *Cuomo* v. *Clearing House Assn., L. L. C.,* 129 S. Ct. 2710 (2009), an action against a national bank in a court of appropriate jurisdiction brought by a state attorney general (or other chief law enforcement officer) to enforce an applicable law against a national bank and to seek relief as authorized by such law is not an exercise of visitorial powers under 12 U.S.C. 484.

(c) * * *

(2) *Exception for courts of justice.* National banks are subject to such visitorial powers as are vested in the courts of justice. This exception pertains to the powers inherent in the judiciary.

* * * * *

§ 7.4006 [Removed and Reserved]

■ 34. Remove and reserve § 7.4006.

■ 35. Amend § 7.4007 by:
■ a. Removing paragraph (b)(1);
■ b. Redesignating paragraph (b)(2) introductory text as paragraph (b) introductory text;
■ c. Redesignating former paragraphs (b)(2)(i) through (vii) as paragraphs (b)(1) through (7), respectively;
■ d. Revising paragraph (c) introductory text;
■ e. Revising footnote 5 in paragraph (c)(3); and
■ f. Revising paragraph (c)(8).

The revisions read as follows:

§ 7.4007 Deposit-taking.

* * * * *

(c) *State laws that are not preempted.* State laws on the following subjects are not inconsistent with the deposit-taking powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.* 517 U.S. 25 (1996):

* * * * *

(3) Criminal law; [5]

[5] *But see* the distinction drawn by the Supreme Court in *Easton* v. *Iowa,* 188 U.S. 220, 238 (1903), where the Court stated that ''[u]ndoubtedly a state has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction * * *. But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States.'' *Id.* at 239 (holding that Federal law governing the operations of national banks preempted a state criminal law prohibiting insolvent banks from accepting deposits).

* * * * *

(8) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.* 517 U.S. 25 (1996), or that is made applicable by Federal law.

■ 36. Amend § 7.4008 by:
■ a. Removing paragraph (d)(1);
■ b. Redesignating paragraph (d)(2) introductory text as paragraph (d) introductory text;
■ c. Redesignating former paragraphs (d)(2)(i) through (x) as paragraphs (d)(1) through (10), respectively; and
■ d. Revising paragraphs (e) introductory text, footnote 7 in paragraph (e)(3), and paragraph (e)(8).

The revisions read as follows:

§ 7.4008 Lending.

* * * * *

(e) *State laws that are not preempted.* State laws on the following subjects are not inconsistent with the non-real estate lending powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.,* 517 U.S. 25 (1996):

* * * * *

(3) Criminal law; [7]

[7] See *supra* note 5 regarding the distinction drawn by the Supreme Court in *Easton* v. *Iowa,* 188 U.S. 220, 238 (1903).

* * * * *

(8) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.,* 517 U.S.

25 (1996) or that is made applicable by Federal law.

§ 7.4009 [Removed and Reserved]

■ 37. Remove and reserve § 7.4009.

■ 38. Add § 7.4010 to read as follows:

§ 7.4010 Applicability of state law and visitorial powers to Federal savings associations and subsidiaries.

(a) In accordance with section 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b), Federal savings associations and their subsidiaries shall be subject to the same laws and legal standards, including regulations of the OCC, as are applicable to national banks and their subsidiaries, regarding the preemption of state law.

(b) In accordance with section 1047 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1465), the provisions of section 5136C(i) of the Revised Statutes regarding visitorial powers apply to Federal savings associations and their subsidiaries to the same extent and in the same manner as if they were national banks or national bank subsidiaries.

PART 8—ASSESSMENT OF FEES

■ 39. The authority citation for part 8 is revised to read as follows:

Authority: 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, 3108, and 5412(b)(1)(B); and 15 U.S.C. 78c and 78*l.*

■ 40. Section 8.1 is revised to read as follows:

§ 8.1 Scope and application.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, and 3108; and 15 U.S.C. 78c and 78*l.*

■ 41. Section 8.2 is revised to read as follows:

§ 8.2 Semiannual assessment.

(a) Each national bank and each Federal savings association shall pay to the Comptroller of the Currency a semiannual assessment fee, due by March 31 and September 30 of each year, for the six month period beginning on January 1 and July 1 before each payment date. The Comptroller of the Currency will calculate the amount due under this section and provide a notice of assessments to each national bank and each Federal savings association no later than 7 business days prior to March 31 and September 30 of each year. The semiannual assessment will be calculated as follows:

If the bank's or Federal savings association's total assets (consolidated domestic and foreign subsidiaries) are:		The semiannual assessment is:		
		This amount—base amount	Plus marginal rates	Of excess over—
Over—	But not over—			
Column A	Column B	Column C	Column D	Column E
Million (dollars)	Million (dollars)	(dollars)		Million (dollars)
0	2	X1	0	
2	20	X2	Y1	2
20	100	X3	Y2	20
100	200	X4	Y3	100
200	1,000	X5	Y4	200
1,000	2,000	X6	Y5	1,000
2,000	6,000	X7	Y6	2,000
6,000	20,000	X8	Y7	6,000
20,000	40,000	X9	Y8	20,000
40,000	250,000	X10	Y9	40,000
250,000		X11	Y10	250,000

(1) Every national bank and every Federal savings association falls into one of the asset-size brackets denoted by Columns A and B. A bank's or Federal savings association's semiannual assessment is composed of two parts. The first part is the calculation of a base amount of the assessment, which is computed on the assets of the bank or Federal savings association up to the lower endpoint (Column A) of the bracket in which it falls. This base amount of the assessment is calculated by the OCC in Column C.

(2) The second part is the calculation of assessments due on the remaining assets of the bank or Federal savings association in excess of Column E. The excess is assessed at the marginal rate shown in Column D.

(3) The total semiannual assessment is the amount in Column C, plus the amount of the bank's or Federal savings association's assets in excess of Column E times the marginal rate in Column D: Assessments = C+[(Assets − E) × D].

(4) Each year, the OCC may index the marginal rates in Column D to adjust for the percent change in the level of prices, as measured by changes in the Gross Domestic Product Implicit Price Deflator (GDPIPD) for each June-to-June period. The OCC may at its discretion adjust marginal rates by amounts less than the percentage change in the GDPIPD. The OCC will also adjust the amounts in Column C to reflect any change made to the marginal rate.

(5) The specific marginal rates and complete assessment schedule will be published in the ''Notice of Comptroller of the Currency Fees,'' provided for at § 8.8 of this part. Each semiannual assessment is based upon the total assets shown in the national bank's or Federal savings association's most recent ''Consolidated Reports of Condition and Income'' (Call Report) or ''Thrift Financial Report,'' as appropriate, preceding the payment date. Each bank or Federal savings association subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth quarterly Call Report or Thrift Financial Report, as appropriate, required by the Office under 12 U.S.C. 161 and 12 U.S.C. 1464(v) is subject to the full assessment for the next six month period.

(6)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead bank or non-lead Federal savings association by a percentage that it will specify in the ''Notice of Comptroller of the Currency Fees'' described in § 8.8.

(ii) For purposes of this paragraph (a)(6):

(A) *Lead bank* or *lead Federal savings association* means the largest national bank or Federal savings association

controlled by a company, based on a comparison of the total assets held by each national bank or Federal savings association controlled by that company as reported in each bank's or Federal savings association's Call Report or Thrift Financial Report, as appropriate, filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead bank* or *non-lead Federal savings association* means a national bank or Federal savings association that is not the lead bank or lead Federal savings association controlled by a company that controls two or more national banks or Federal savings associations.

(C) *Control* and *company* with respect to national banks have the same meanings as these terms have in sections 2(a)(2) and 2(b), respectively, of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(2) and (b)).

(D) *Control* and *company* with respect to Federal savings associations have the same meanings as these terms have in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a).

(b)(1) Each Federal branch and each Federal agency shall pay to the Comptroller of the Currency a semiannual assessment fee, due by March 31 and September 30 of each year, for the six month period beginning on January 1 and July 1 before each payment date. The Comptroller of the Currency will calculate the amount due under this section and provide a notice of assessments to each national bank no later than 7 business days prior to March 31 and September 30 of each year.

(2) The amount of the semiannual assessment paid by each Federal branch and Federal agency shall be computed at the same rate as provided in the Table in 12 CFR 8.2(a); however, only the total domestic assets of the Federal branch or agency shall be subject to assessment.

(3) Each semiannual assessment of each Federal branch or agency is based upon the total assets shown in the Federal branch's or agency's Call Report most recently preceding the payment date. Each Federal branch or agency subject to the jurisdiction of the OCC on the date of the second and fourth Call Reports is subject to the full assessment for the next six-month period.

(4)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead Federal branch or agency by an amount that it will specify in the ''Notice of Comptroller of the Currency Fees'' described in § 8.8.

(ii) For purposes of this paragraph (b)(4):

(A) *Lead Federal branch or agency* means the largest Federal branch or agency of a foreign bank, based on a comparison of the total assets held by each Federal branch or agency of that foreign bank as reported in each Federal branch's or agency's Call Report filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead Federal branch or agency* means a Federal branch or agency that is not the lead Federal branch or agency of a foreign bank that controls two or more Federal branches or agencies.

(c) *Additional assessment for independent credit card banks and independent credit card Federal savings associations*—(1) *General rule.* In addition to the assessment calculated according to paragraph (a) of this section, each independent credit card bank and independent credit card Federal savings association will pay an assessment based on receivables attributable to credit card accounts owned by the bank or Federal savings association. This assessment will be computed by adding to its asset-based assessment an additional amount determined by its level of receivables attributable. The dollar amount of the additional assessment will be published in the ''Notice of Comptroller of the Currency of Fees,'' described at § 8.8.

(2) *Independent credit card banks and independent credit card Federal savings associations affiliated with full-service national banks or Federal savings associations.* The OCC will assess an independent credit card bank and an independent credit card Federal savings association in accordance with paragraph (c)(1) of this section, notwithstanding that the bank or Federal savings association is affiliated with a full-service national bank or full service Federal savings association, if the OCC concludes that the affiliation is intended to evade this part.

(3) *Definitions.* For purposes of this paragraph (c), the following definitions apply:

(i) *Affiliate,* with respect to national banks, has the same meaning as this term has in 12 U.S.C. 221a(b).

(ii) *Affiliate,* with respect to Federal savings associations, has the same meaning as in 12 U.S.C. 1462(9).

(iii) *Engaged primarily in card operations* means a bank described in section 2(c)(2)(F) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(F)) or a bank or a Federal savings association whose ratio of total gross receivables attributable to the bank's or Federal savings association's balance sheet assets exceeds 50%.

(iv) *Full-service national bank* is a national bank that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of permissible banking activities.

(v) *Full-service Federal savings association* is a Federal savings association that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of activities permissible for Federal savings associations.

(vi) *Independent credit card bank* is a national bank that engages primarily in credit card operations and is not affiliated with a full-service national bank.

(vii) *Independent credit card Federal savings association* is a Federal savings association that engages primarily in credit card operations and is not affiliated with a full-service Federal savings association.

(viii) *Receivables attributable* is the total amount of outstanding balances due on credit card accounts owned by an independent credit card bank or an independent credit card Federal savings association (the receivables attributable to those accounts) on the last day of the assessment period, minus receivables retained on the bank's or Federal savings association's balance sheet as of that day.

(4) *Reports of receivables attributable.* Independent credit card banks and independent credit card Federal savings associations will report receivables attributable data to the OCC semiannually at a time specified by the OCC.

(d) *Surcharge based on the condition of the bank or Federal savings association.* Subject to any limit that the OCC prescribes in the ''Notice of Comptroller of the Currency Fees,'' the OCC shall apply a surcharge to the semiannual assessment computed in accordance with paragraphs (a) through (c) of this section. This surcharge will be determined by multiplying the semiannual assessment computed in accordance with paragraphs (a) through (c) of this section by—

(1) 1.5, in the case of any bank or Federal savings association that receives a composite rating of 3 under the Uniform Financial Institutions Rating System (UFIRS) and any Federal branch or agency that receives a composite rating of 3 under the ROCA rating system (which rates risk management, operational controls, compliance, and

asset quality) at its most recent examination; and

(2) 2.0, in the case of any bank or Federal savings association that receives a composite UFIRS rating of 4 or 5 and any Federal branch or agency that receives a composite rating of 4 or 5 under the ROCA rating system at its most recent examination.

■ 42. Section 8.6 is revised to read as follows:

§ 8.6 Fees for special examinations and investigations.

(a) *Fees.* Pursuant to the authority contained in 12 U.S.C. 16, 481, 482, 1467, and 1831c, the Office of the Comptroller of the Currency may assess a fee for:

(1) Examining the fiduciary activities of national banks and Federal savings associations and related entities;

(2) Conducting special examinations and investigations of national banks, Federal branches or agencies of foreign banks, and Federal savings associations;

(3) Conducting special examinations and investigations of an entity with respect to its performance of activities described in section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)) if the OCC determines that assessment of the fee is warranted with regard to a particular bank or Federal savings association because of the high risk or unusual nature of the activities performed; the significance to the bank's or Federal saving association's operations and income of the activities performed; or the extent to which the bank or Federal savings association has sufficient systems, controls, and personnel to adequately monitor, measure, and control risks arising from such activities;

(4) Conducting special examinations and investigations of affiliates of national banks, Federal savings associations, and Federal branches or agencies of foreign banks;

(5) Conducting examinations and investigations made pursuant to 12 CFR part 5, Rules, Policies, and Procedures for Corporate Activities; and

(6) Conducting examinations of depository-institution permissible activities of nondepository institution subsidiaries of depository institution holding companies pursuant to section 605(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1831c).

(b) *Notice of Comptroller of the Currency fees.* The OCC publishes the fee schedule for fiduciary activities, special examinations and investigations, examinations of affiliates and examinations related to corporate activities in the ''Notice of Comptroller of the Currency Fees'' described in § 8.8.

(c) *Additional assessments on trust banks and trust Federal savings associations—(1) Independent trust banks and independent trust Federal savings associations.* The assessment of independent trust banks and independent trust Federal savings associations will include a fiduciary and related asset component, in addition to the assessment calculated according to § 8.2 of this part, as follows:

(i) *Minimum fee.* All independent trust banks and independent trust Federal savings associations will pay a minimum fee, to be provided in the ''Notice of Comptroller of the Currency Fees.''

(ii) *Additional amount for independent trust banks and independent trust Federal savings associations with fiduciary and related assets in excess of $1 billion.* Independent trust banks and independent trust Federal savings associations with fiduciary and related assets in excess of $1 billion will pay an amount that exceeds the minimum fee. The amount to be paid will be calculated by multiplying the amount of fiduciary and related assets by a rate or rates provided by the OCC in the ''Notice of Comptroller of the Currency Fees.''

(iii) *Surcharge based on the condition of the bank or of the Federal savings association.* Subject to any limit that the OCC prescribes in the ''Notice of Comptroller of the Currency Fees,'' the OCC shall adjust the semiannual assessment computed in accordance with paragraphs (c)(1)(i) and (ii) of this section by multiplying that figure by 1.5 for each independent trust bank and independent trust Federal savings association that receives a composite rating of 3 under the Uniform Financial Institutions Rating System (UFIRS) at its most recent examination and by 2.0 for each bank that receives a composite UFIRS rating of 4 or 5 at such examination.

(2) *Trust banks affiliated with full-service national banks and trust Federal savings associations affiliated with full-service Federal savings associations.* The OCC will assess a trust bank and a trust Federal savings association in accordance with paragraph (c)(1) of this section, notwithstanding that the bank is affiliated with a full-service national bank, or that the Federal savings association is affiliated with a full-service Federal savings association, if the OCC concludes that the affiliation is intended to evade the assessment regulation.

(3) *Definitions.* For purposes of this paragraph (c) of this section, the following definitions apply:

(i) *Affiliate,* with respect to a national bank, has the same meaning as this term has in 12 U.S.C. 221a(b);

(ii) *Affiliate,* with respect to Federal savings associations, has the same meaning as in 12 U.S.C. 1462(9).

(iii) *Full-service national bank* is a national bank that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of permissible banking activities.

(iv) *Full-service trust Federal savings association* is a Federal savings association that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of activities permissible for Federal savings associations.

(v) *Independent trust bank* is a national bank that has trust powers, does not primarily offer full-service banking, and is not affiliated with a full-service national bank;

(vi) *Independent trust Federal savings association* is a Federal savings association that has trust powers, does not primarily offer full-service banking, and is not affiliated with a full-service Federal savings association;

(vii) *Fiduciary and related assets for national banks* are those assets reported on Schedule RC–T of FFIEC Forms 031 and 041, Line 10 (columns A and B) and Line 11 (column B), any successor form issued by the FFIEC, and any other fiduciary and related assets defined in the ''Notice of Comptroller of the Currency Fees''; and

(viii) *Fiduciary and related assets for Federal savings associations* are those assets reported on Schedule FS of OTS Form 1313, Line FS21, any successor form issued by the OCC, and any other fiduciary and related assets defined in the ''Notice of Comptroller of the Currency Fees.''

■ 43. Effective December 31, 2011, add the word ''and'' at the end of paragraph (vi), revise paragraph (c)(3)(vii), and remove paragraph (c)(3)(viii).

The revision reads as follows:

§ 8.6 Fees for special examinations and investigations.

* * * * *

(c) * * *

(3) * * *

(vii) *Fiduciary and related assets* are those assets reported on Schedule RC–T of FFIEC Forms 031 and 041, Line 10

(columns A and B) and Line 11 (column B), any successor form issued by the FFIEC, and any other fiduciary and related assets defined in the ''Notice of Comptroller of the Currency Fees.''

§ 8.7 [Amended]

■ 44. Amend § 8.7. paragraph (a) by:
■ a. Removing ''and'' after ''Federal branch,'' and adding '', and each Federal savings association'' after ''each Federal agency'' in the first sentence; and
■ b. Adding '', each Federal savings association,'' after ''each national bank'' in the second sentence.

PART 28—INTERNATIONAL BANKING ACTIVITIES

■ 45. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24 (Seventh), 93a, 161, 602, 1818, 3101 *et seq.,* and 3901 *et seq.*

§ 28.16 [Amended]

■ 46. Section 28.16 is amended by removing in paragraph (b) introductory text the term ''$100,000'' and adding in its place ''the standard maximum deposit insurance amount as defined in 12 U.S.C. 1821(a)(1)(E)''.

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 47. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* and 5412(b)(2)(B).

Subpart A—General

■ 48. Amend § 34.4 by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising paragraph (b) introductory text;
■ c. Revising footnote 2 in paragraph (b)(3); and
■ d. Revising paragraph (b)(9).

The revisions read as follows:

§ 34.4 Applicability of state law.

(a) A national bank may make real estate loans under 12 U.S.C. 371 and § 34.3, without regard to state law limitations concerning:

* * * * *

(b) State laws on the following subjects are not inconsistent with the real estate lending powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.,* 517 U.S. 25 (1996):

* * * * *

(3) Criminal law; [2]

[2] *But see* the distinction drawn by the Supreme Court in *Easton* v. *Iowa,* 188 U.S. 220, 238 (1903), where the Court stated that ''[u]ndoubtedly a state has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction * * *. But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States.'' *Id.* at 239 (holding that Federal law governing the operations of national banks preempted a state criminal law prohibiting insolvent banks from accepting deposits).

* * * * *

(9) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.,* 517 U.S. 25 (1996), or that is made applicable by Federal law.

■ 49. Add § 34.6 to subpart A to read as follows:

§ 34.6 Applicability of state law to Federal savings associations and subsidiaries.

In accordance with section 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b), Federal savings associations and their subsidiaries shall be subject to the same laws and legal standards, including regulations of the OCC, as are applicable to national banks and their subsidiaries, regarding the preemption of state law.

Dated: July 14, 2011.

John Walsh,

Acting Comptroller of the Currency.

[FR Doc. 2011–18231 Filed 7–20–11; 8:45 am]

BILLING CODE 4810–33–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–HQ–2011–1]

12 CFR Chapter X

Identification of Enforceable Rules and Orders

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final list.

SUMMARY: Section 1063(i) of the Consumer Financial Protection Act of 2010 (''Act'')[1] requires the Bureau of Consumer Financial Protection (''CFPB'') to publish in the Federal Register not later than the designated transfer date a list of the rules and orders that will be enforced by the CFPB. This document sets forth that list.

FOR FURTHER INFORMATION CONTACT: Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1801 L Street, NW., Washington, DC 20036, 202–435–7275.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Act, on the designated transfer date, July 21, 2011,[2] certain consumer financial protection authorities will transfer from seven transferor agencies [3] to the CFPB, and the CFPB will also assume certain new authorities. Subject to the limitations and other provisions of the Act, the CFPB will be authorized to enforce, *inter alia*, rules and orders issued by the transferor agencies under the enumerated consumer laws.[4] The CFPB will also have authority to enforce in some circumstances the Federal Trade Commission's Telemarketing Sales Rule and its rules under the Federal Trade Commission Act, although the Federal Trade Commission will retain full authority over these rules.[5]

Section 1063(i) of the Act provides that, not later than the designated transfer date, the CFPB ''(1) shall, after consultation with the head of each transferor agency, identify the rules and orders that will be enforced by the [CFPB]; and (2) shall publish a list of such rules and orders in the **Federal Register**.'' The CFPB consulted with each transferor agency pursuant to section 1063(i) and developed an initial list of rules. After consultation, neither the transferor agencies nor the CFPB identified any orders for inclusion in the list.[6]

[1] The Act is Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203.

[2] The Secretary of the Treasury designated this date pursuant to section 1062 of the Act. *See* 75 FR 57252–02, Sept. 20, 2010.

[3] Section 1061(a)(2) of the Act defines the terms ''transferor agency'' and ''transferor agencies'' to mean, respectively, ''(A) the Board of Governors (and any Federal reserve bank, as context requires), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and Urban Development, and the heads of those agencies, and (B) the agencies listed in subparagraph (A) collectively.''

[4] ''Enumerated consumer laws'' is defined in section 1002(12) of the Act and section 1400(b) of the Mortgage Reform and Anti-Predatory Lending Act, Tit. XIV, Public Law 111–203.

[5] These rules are listed as items 1 and 6 through 12 in section F (''Federal Trade Commission'') of the list below.

[6] Section 1063(i) requires the CFPB to list only the rules and orders issued by transferor agencies that will be enforceable by the CFPB. The list

Continued

Because the list under section 1063(i) reflects the CFPB's interpretation of its authority under the Act and relates to agency organization, procedure, or practice, the list is not subject to the notice-and-comment requirements of the Administrative Procedure Act (''APA'') (5 U.S.C. 551 *et seq.*).[7] Nevertheless, on May 31, 2011, the CFPB published a Notice containing an initial list in the **Federal Register** (''May 31 Notice'') and requested public comment.[8]

As noted in the May 31 Notice, the CFPB's authority is defined by the Act and other applicable law. As a result, the CFPB's publication of the list called for by section 1063(i) will not have a substantive effect on any rules or orders or the parties who may be subject to them; it merely provides a convenient reference source. Accordingly, the inclusion or exclusion of any rule or order does not alter the CFPB's authority.[9] In addition, section 1063(i) does not require the CFPB to update, correct, or otherwise maintain the final list.

II. Discussion of Comments and Clarifications

In response to the May 31 Notice, the CFPB received 12 comments from regulated entities, trade associations, and consumer groups, among others. None of the comments recommended that any items be added to or removed from the list. The list contained in this document is identical to the list published in the May 31 Notice, except that the final list contains a technical correction to the ordering of the Department of Housing and Urban Development (''HUD'') rules and reflects the addition of two rules issued after the May 31 Notice: the FTC's Mortgage Acts and Practices—Advertising rule, and HUD's rule implementing the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.[10]

Some comments inquired about the CFPB's application of guidance issued by the transferor agencies in connection with the rules contained on the list. The CFPB does not consider guidance or similar documents as falling within the meaning of enforceable ''rules and orders'' that are required to be listed pursuant to section 1063(i). However, by way of clarification, the CFPB notes that for laws with respect to which rulemaking authority will transfer to the CFPB, the official commentary, guidance, and policy statements issued prior to July 21, 2011, by a transferor agency with exclusive rulemaking authority for the law in question (or similar documents that were jointly agreed to by all relevant agencies in the case of shared rulemaking authority) will be applied by the CFPB pending further CFPB action. The CFPB will give due consideration to the application of other written guidance, interpretations, and policy statements issued prior to July 21, 2011, by a transferor agency in light of all relevant factors, including: whether the agency had rulemaking authority for the law in question; the formality of the document in question and the weight afforded it by the issuing agency; the persuasiveness of the document; and whether the document conflicts with guidance or interpretations issued by another agency. The CFPB will seek over time to improve the clarity and uniformity of guidance regarding the laws it will administer as necessary in order to facilitate compliance with the Federal consumer financial laws.

Several other comments addressed policy issues that are outside the scope of the list called for by section 1063(i), such as specific recommendations regarding the CFPB's exercise of its rulemaking authority.[11] The CFPB values this input, but has determined that this document is not the appropriate forum in which to address the issues raised.

Finally, it bears noting that, later this year, the CFPB intends to publish in chapter X of title 12 of the Code of Federal Regulations the rules for which rulemaking authority transfers to the CFPB. These rules will contain conforming amendments to reflect both the transfer of authority to the CFPB under the Act and certain other changes made by the Act to the underlying statutes.[12] In the interim, the existing rules will continue in effect and the changes made by the Act to transfer authority to the CFPB will be effective as of the designated transfer date by operation of law.[13]

III. Final List

Accordingly, pursuant to section 1063(i) of the Act, the CFPB sets forth the following list of rules that will be enforceable by the CFPB subject to the limitations and other provisions of the Act: [14]

A. Board of Governors of the Federal Reserve

1. 12 CFR part 202—Equal Credit Opportunity Act (Regulation B)
2. 12 CFR part 203—Home Mortgage Disclosure (Regulation C)
3. 12 CFR part 205—Electronic Fund Transfers (Regulation E)
4. 12 CFR 208.101–.105 & Appendix A to Subpart I—Registration of Residential Mortgage Loan Originators (Regulation H, Subpart I)
5. 12 CFR part 213—Consumer Leasing (Regulation M)
6. 12 CFR part 216—Privacy of Consumer Financial Information (Regulation P)
7. 12 CFR part 222—Fair Credit Reporting (Regulation V), except with respect to §§ 222.1(c) (effective dates), 222.83 (Disposal of consumer information), 222.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 222.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)
8. 12 CFR part 226—Truth in Lending (Regulation Z)
9. 12 CFR part 230—Truth in Savings (Regulation DD)

B. Federal Deposit Insurance Corporation

1. 12 CFR part 332—Privacy of Consumer Financial Information
2. 12 CFR part 334—Fair Credit Reporting, except with respect to §§ 334.83

contained in this notice therefore does not include any rules and orders issued by non-transferor agencies that will be enforceable by the CFPB.

[7] Because publication of the list under section 1063(i) is not subject to the APA's notice-and-comment requirements, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

[8] 76 FR 31222, May 31, 2011. Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury published the May 31 Notice and is publishing this document on behalf of the CFPB.

[9] For example, the inclusion of rules relating to HUD administrative enforcement procedures does not detract from the CFPB's authority to bring lawsuits and administrative enforcement actions under subtitle E of the Act.

[10] This rule will become effective on August 29, 2011. See 76 FR 34864, June 30, 2011. The list contained in this notice does not include proposed rules that are currently pending.

[11] For example, these comments included: requests that CFPB take or refrain from taking regulatory action with respect to certain entities or industries; requests that the CFPB not impose new or duplicative regulatory burdens; and requests that the CFPB appropriately take into account differences between regulated entities (e.g., differences between credit unions and banks). Some comments indicated support for the Act's consolidation of certain consumer financial protection functions into a single federal agency, while others expressed concern about such consolidation. Other comments emphasized the importance of involving stakeholders in the rulemaking process and requested information on the CFPB's plans for doing so.

[12] Rulemaking authority for all the rules contained on the list below, except items 1 and 6 through 12 in section F (''Federal Trade Commission''), will transfer to the CFPB on the designated transfer date.

[13] During this interim period, the CFPB may from time to time provide guidance on its Web site, *http://www.consumerfinance.gov,* regarding procedural matters (e.g. how to make certain filings with the CFPB) relating to compliance with the existing regulations in light of the transfer of authority to the CFPB.

[14] Unless otherwise noted, all references to a Part include accompanying appendices and supplements.

(Disposal of consumer information), 334.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 334.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)
3. 12 CFR 365.101–.105 & Appendix A to Subpart B—Registration of Residential Mortgage Loan Originators

C. Office of the Comptroller of the Currency

1. 12 CFR 34.20–.25—Adjustable-Rate Mortgages (but only as applied to non-federally chartered housing creditors under the Alternative Mortgage Transaction Parity Act (''AMTPA''))
2. 12 CFR 34.101–.105 & Appendix A to Subpart F—Registration of Residential Mortgage Loan Originators
3. 12 CFR part 40—Privacy of Consumer Financial Information
4. 12 CFR part 41—Fair Credit Reporting, except with respect to §§ 41.83 (Disposal of consumer information), 41.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 41.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)

D. Office of Thrift Supervision

1. 12 CFR 560.35—Adjustments to home loans (but only as applied to non-federally chartered housing creditors under AMTPA)
2. 12 CFR 560.210–220—Alternative Mortgage Transactions (but only as it relates to AMTPA)
3. 12 CFR 563.101–.105 & Appendix A to Subpart D—Registration of Residential Mortgage Loan Originators
4. 12 CFR part 571—Fair Credit Reporting, except with respect to §§ 571.83 (Disposal of consumer information), 571.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 571.91 (Duties of card issuers regarding change of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)
5. 12 CFR part 573—Privacy of Consumer Financial Information

E. National Credit Union Administration

1. 12 CFR 701.21—Loans to members and lines of credit to members (but only as applied to non-federally chartered housing creditors under AMTPA)
2. 12 CFR part 707—Truth in Savings
3. 12 CFR part 716—Privacy of Consumer Financial Information
4. 12 CFR part 717—Fair Credit Reporting, except with respect to §§ 717.83 (Disposal of consumer information), 717.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 717.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)
5. 12 CFR part 741—Requirements for Insurance, but only with respect to §§ 741.217 (Truth in savings), 741.220 (Privacy of consumer financial information), & 741.223 (Registration of residential mortgage loan originators)
6. 12 CFR part 761—Registration of Mortgage Loan Originators

F. Federal Trade Commission

1. 16 CFR part 310—Telemarketing Sales Rule
2. 16 CFR part 313—Privacy of Consumer Financial Information
3. 16 CFR part 320—Disclosure Requirements for Depository Institutions Lacking Federal Depository Insurance
4. 16 CFR part 321—Mortgage Acts and Practices—Advertising
5. 16 CFR part 322—Mortgage Assistance Relief Services
6. 16 CFR part 425—Use of Prenotification Negative Option Plans
7. 16 CFR part 429—Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations
8. 16 CFR part 433—Preservation of Consumers' Claims and Defenses
9. 16 CFR part 444—Credit Practices
10. 16 CFR part 435—Mail or Telephone Order Merchandise
11. 16 CFR part 436—Disclosure Requirements and Prohibitions Concerning Franchising
12. 16 CFR part 437—Disclosure Requirements and Prohibitions Concerning Business Opportunities
13. 16 CFR Subchapter F, Parts 603 *et seq.*—Fair Credit Reporting Act, except with respect to Part 681 (Identity Theft Rules), Part 682 (Disposal of Consumer Report Information and Records), & Appendix A to Part 681 (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)
14. 16 CFR part 901—Procedures for State Application for Exemption from the Provisions of the [Fair Debt Collection Practices] Act

G. Department of Housing and Urban Development

1. 24 CFR 26.28–.56—Hearing Procedures Pursuant to the Administrative Procedure Act
2. 24 CFR part 30—Civil Money Penalties: Certain Prohibited Conduct (but only as applied to the Real Estate Settlement Procedures Act of 1974 (''RESPA''), the Interstate Land Sales Full Disclosure Act (''ILSA''), and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008)
3. 24 CFR part 1710—Land Registration
4. 24 CFR part 1715—Purchasers' Revocation Rights, Sales Practices, and Standards
5. 24 CFR part 1720—Formal Procedures and Rules of Practice
6. 24 CFR part 3400—SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities
7. 24 CFR part 3500—Real Estate Settlement Procedures Act
8. 24 CFR part 3800—Investigations in Consumer Regulatory Programs (but only as applied to RESPA and ILSA)

Dated: July 14, 2011.

Alastair Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

[FR Doc. 2011–18426 Filed 7–20–11; 8:45 am]

BILLING CODE 4810–25–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 126

RIN 3245–AG45

Small Business HUBZone Program; Government Contracting Programs

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends the U.S. Small Business Administration's regulations pertaining to the Historically Underutilized Business Zone (HUBZone Program). Specifically, this interim final rule allows a declined or decertified HUBZone small business to reapply ninety (90) calendar days after the decline or decertification decision is rendered, rather than wait one year to reapply, provided that it meets the eligibility requirements at that time of application.

DATES: *Effective Date:* This rule is effective July 21, 2011.

Comment Date: Comments must be received on or before August 22, 2011.

ADDRESSES: You may submit comments, identified by RIN 3245–AG45 by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov* and follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD–ROM submissions:* Mariana Pardo, Deputy Director, HUBZone Program, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Mariana Pardo, Deputy Director, HUBZone Program, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *http://www.Regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.Regulations.gov*, please submit the information to Mariana Pardo and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination of whether the information will be published or not.

FOR FURTHER INFORMATION CONTACT: Mariana Pardo, Deputy Director, HUBZone Program, (202) 205–2985 or by e-mail at *mariana.pardo@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Small Business Act (Act) and implementing regulations require that, with the exception of certain specified entities, qualified HUBZone small business concerns (SBCs) have a principal office located in a HUBZone. 15 U.S.C. 632(p)(5)(A)(i)(I)(aa); 13 CFR 126.103. The Act and the implementing regulations also require that at least 35% of the HUBZone small business concern's employees reside in a HUBZone. *Id.* 13 CFR 126.200(b). The statute and regulations define a HUBZone to mean an area located within one or more qualified census tracts (QCTs), qualified non-metropolitan counties (QNMCs), lands within the external boundaries of an Indian reservation, redesignated areas, or base closure areas. *Id.*§ 632(p)(1); 13 CFR 126.103.

The Act and SBA's regulations define a QCT by referring to the Internal Revenue Code of 1987, which in turn defines a QCT as any census tract which is designated by the Secretary of Housing and Urban Development (HUD) and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income. *See* 26 U.S.C. 42(d)(5)(C). Thus, a QCT may be located in a nonmetropolitan or a metropolitan area. In addition, a QCT is not necessarily a ''county,'' but is an area located within a county.

The Act and regulations also define a QNMC as any county that was not located in a metropolitan statistical area and in which: (1) The median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Census Bureau; (2) the unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Department of Labor (DOL); or (3) there is located a difficult development area, as designated by HUD within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States. 15 U.S.C. 632(p)(4)(B).

In sum, the HUBZone areas are designated by statute and draw upon determinations and information obtained by other agencies. The SBA takes these designations and depicts them on an easy-to-use HUBZone map, available at *http://www.sba.gov/content/hubzone-maps.* The SBA does not have discretion when it comes to designating HUBZones.

With respect to both QCTs and QNMCs, the SBA relies on data from HUD, Census Bureau and DOL in order to determine which areas are HUBZones. With respect to the census tracts, HUD reviews census tracts as new data from the Census Bureau become available or when metropolitan area definitions change. HUD's current designations of census tracts are based on data from the 2000 Census because in the past, tract-level data was only available from a Decennial Census. However, due to changes in collection of income data at the tract level by the Census Bureau, HUD will now be relying on data from the American Community Survey (ACS). Although the ACS is an annual survey, tract-level data from the ACS will be released as five-year averages. The first release of this data will cover the 2005 through 2009 period and the Census Bureau expects to make this data available sometime soon. HUD will review this new data during 2012 and make census tract determinations. Census tracts will be subsequently reviewed based on new data every 5 years. SBA relies on these HUD designations for purposes of its program.

However, before HUD can designate a census tract, it must rely on the Census Bureau to define the census tract's boundaries. With respect to the census tracts, the Census Bureau defines the boundaries in cooperation with local authorities every ten years and, following a public comment period, has recently completed defining tract boundaries for the 2010 Census. Once census tract boundaries are set, they remain unchanged for the next decade. Thus, tract boundaries will not be changed again until the 2020 Decennial Census.

Therefore, with respect to HUBZone QCTs, SBA relies on designations from HUD and boundary designations from the Census Bureau.

With respect to nonmetropolitan counties, SBA receives unemployment data from DOL yearly. Further, designations based on the HUD defined Difficult Development Areas (DDAs) are updated annually. Thus, for QNMCs, the SBA relies on DOL data and HUD definitions for DDAs.

When the HUBZone Program first started, the receipt of such data or designations, especially the annual data, meant that in some cases certain HUBZone areas could be affected every year by the release of certain data, *i.e.*, the areas would lose HUBZone status. As a result, the Small Business Act was amended to add a new HUBZone area known as a ''redesignated area.'' At that time, a redesignated area, that is, any QCT or QNMC that ceased to be qualified, would become redesignated as a HUBZone area only for the 3-year period following the date on which the QCT or QNMC ceased to be so qualified. Public Law 106–554, § 613(1)(c) (2000). Congress added these redesignated areas because it believed that decertifying large numbers of small businesses that had not seen any benefit to the program would have threatened the HUBZone program by giving it a reputation as not worthwhile. Congress also believed any county that could change into and out of HUBZone status annually would not attract small businesses to the HUBZone program and would hinder investment in such a location. S. Rep. 107–19, 107th Cong. 1st Sess. (2001).

A few years later, the SBA encountered additional problems once the Census Bureau released the 2000 Decennial Census results as a large number of areas ceased to be considered HUBZones. In response, Congress amended the Act in 2004 to redefine a redesignated area to mean any QCT or QNMC that ceases to be qualified may be a redesignated area until the later of: (1) The date on which the Census Bureau publicly releases the first results from the 2010 Decennial Census that affects the eligibility of the HUBZone; or (2) three years after the date on which the census tract or nonmetropolitan county ceased to be so qualified. 15 U.S.C. 632(p)(4)(C). The purpose of extending the redesignated status until the 2010 Decennial Census or three years after the date the QCT or QNMC ceases to be a qualified HUBZone (whichever is later) was to provide adequate time for HUBZone SBCs to recoup a return on investment and assist the Federal government in meeting its statutory prime contracting HUBZone goal of 3 percent.

This year, the Census Bureau will publicly release the first results of the 2010 Decennial Census that affect the eligibility of the HUBZones. The Census Bureau uses the ACS to collect socioeconomic and housing information continuously from a national sample of housing units and people living in group quarters, and tabulates these data on a calendar year basis. Agencies will utilize the evaluated data from the ACS to make QCT and QNMC determinations. The first set of evaluated data using ACS numbers that affect HUBZone eligibility are expected

to be available to the public in the Fall 2011. SBA will generate a new list of QNMCs at that time that will take into consideration the analysis of the income data coming from the five year ACS. At the moment that the new list is made public, those areas that were redesignated prior to 2008 will expire and cease to be HUBZones. The areas affected include redesignated QCTs and QNMCs (including QNMCs that are difficult development areas).

The following provides examples of how the statutory redesignated areas are affected or not affected by the release of the 2010 Decennial Census:

Example 1: A QCT ceased to be a HUBZone in 2004 and therefore became a redesignated HUBZone in 2004. The area may remain a HUBZone until the release of the 2010 Decennial Census data that affects its eligibility or three years from the date of redesignation, whichever is later. In this case, the area will cease to be a HUBZone on the release of the 2010 Decennial Census data that affects its eligibility.

Example 2: A QNMC ceased to be a HUBZone in 2009 because the unemployment ratio disqualified it and therefore became a redesignated HUBZone in 2009. The area may remain a HUBZone until the release of the 2010 Decennial Census data that affects its eligibility or three years from the date of redesignation, whichever is later. In this case, the area will cease to be a HUBZone three years from the date of redesignation—2012.

Example 3: A QNMC ceased to be a HUBZone in 2008 because HUD determined the area was no longer a difficult development area and therefore it became a redesignated HUBZone in 2008. The area may remain a HUBZone until the release of the 2010 Decennial Census data that affects its eligibility or three years from the date of redesignation, whichever is greater. In this case, the area will cease to be a HUBZone three years from the date of redesignation—2011.

When the Census Bureau releases the data, the SBA will publish information and later update its current maps to show the public those areas that are no longer qualified HUBZones because they are no longer redesignated areas. Any current qualified HUBZone SBC with a principal office in one of those areas will be proposed for decertification. The SBA will also publish information and update its maps to show any areas that may become new HUBZones. In some cases, a redesignated area could remain a HUBZone by becoming a QNMC or QCT. The SBA does not have any information at this time to identify areas that will be designated as new HUBZones.

We note that the HUBZone Program was established in 1997, and all the redesignated areas have been allowed to stay in the program or reinstated since December 2004. Since then, no SBC has been decertified because of an expired redesignation. In general, SBA believes that many SBCs in these redesignated areas have been given ample time to recoup a return on their investment. However, we understand that many of these SBCs in the redesignated areas that are getting ready to expire may want to continue to utilize the HUBZone Program and could do so by moving their business into a HUBZone.

Specifically, the HUBZone Program has an average of 8,500 participating firms, and about 40% of the firms will be affected by the expiring redesignations based on principal office location. In addition there will be another set of small businesses that will be ineligible because they no longer meet the HUBZone 35% residency requirement. Further, the HUBZone Program receives approximately 4,000 applications per year. Of the 1,089 applications that where declined in FY10, 62% where declined due to the applicant not meeting the 35% employee HUBZone residence requirement and 46% because of not meeting the principal office requirement. Also, of the 742 firms that voluntarily decertified in FY09 and FY10, 23% did so because they were not meeting the 35% employee HUBZone residence requirement and 22% because of not meeting the principal office requirement.

Under the current regulations, once declined or decertified, these small businesses must wait one year to reapply. At the time it promulgated that rule, the SBA believed that a one year wait was sufficient time for a small business to come back into compliance. However, in many cases, the small business only has to hire a few additional HUBZone residents. In other cases, such as those small businesses with principal offices in HUBZone areas that are about to expire, the SBA has provided several years warning about the expiration. In preparation, some businesses may be planning to move to HUBZone areas. It would not serve the purposes of the program to make such small businesses wait one year to reapply.

The SBA believes that reducing the one year wait period to ninety (90) calendar days would encourage the businesses to move into newly designated HUBZones and hire HUBZone residents, which are the two purposes of the statute. It would also create an incentive for small businesses that no longer meet the HUBZone program requirements to voluntarily decertify and then seek eligibility when they come back into compliance. Because so many small businesses will be affected by the expiration of the redesignated areas—whether as a result of its principal office no longer being located in a HUBZone or employees no longer residing in a HUBZone—the SBA believes it is best to reduce the one year wait period, so that no small business is subject to this lengthy wait.

The SBA does not believe that reducing of the one year wait would increase fraud, waste, and abuse on the program. The business concern must meet all HUBZone eligibility requirements when it reapplies. In fact decreasing the one year wait to ninety (90) calendar days will incentivize small businesses to voluntarily decertify knowing that they do not need to wait a year before reapplying.

As a result of the foregoing, with this interim final rule, the SBA is reducing the one year wait period set forth in 13 CFR 126.309. Accordingly, 13 CFR 126.309 would simply state that a concern that SBA has declined or decertified may seek certification ninety (90) calendar days after the date of decline or decertification if it believes that it has overcome all reasons for decline or decertification through changed circumstances and is currently eligible.

II. Justification for Publication as an Interim Final Status Rule

In general, SBA publishes a rule for public comment before issuing a final rule in accordance with the Administrative Procedure Act (APA) and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. The APA provides an exception to this standard rulemaking process where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

The purpose of the HUBZone program is job creation and capital investment in Historically Underutilized Business Zones. In the present case, the SBA believes that up to half of the currently certified HUBZone SBCs may be affected by the results of the 2010 Decennial Census, whether as a result of the company's principal office losing HUBZone status or the company's employees no longer residing in a HUBZone. Approximately 47.5% of current QNMCs will be removed from HZ qualification, 30% of the current DDAs will be removed and 27% of

QCTs will be removed. This means that many small businesses will no longer be certified HUBZone small business concerns and would have to wait one year to reapply to the program, even if they moved their business to a HUBZone or hired new HUBZone residents as employees. Decreasing the one year wait would permit, and we believe encourage, the businesses to move into newly designated HUBZones, which is one of the purposes of the statute.

This rule will help the communities that qualify as HUBZones under the criteria established by the Act. In allowing concerns to apply for certification after ninety (90) calendar days from being declined or decertified, such qualified HUBZone communities would boost their capital investment and job opportunities for its residents, since these declined or decertified small businesses will need to either locate to HUBZone communities and/or hire HUBZone residents, giving them an increased prospect of positively impacting jobs and investment in historically underutilized areas.

In addition, we have been notifying small businesses whose principal office is located in a redesignated area that is expiring with the release of 2010 Census data but the SBA cannot easily notify other small businesses who have a principal office in a continuing HUBZone but who have employees who live in expiring areas, and must meet the 35% HZ residency requirement. Reducing the one-year wait will encourage such small businesses to voluntarily decertify from the program because they know they will be able to reapply immediately when they are eligible.

We note that the public will still have the opportunity to offer comments, which will be reviewed by the SBA. Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule as quickly as possible.

III. Justification for Immediate Effective Date of Interim Final Rule

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in Section III, ''Justification for Publication as Interim Final Status Rule'', SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date. Nonetheless, the public may provide comments to SBA by the deadline for comments. SBA will review any comments received.

IV. Compliance With Executive Orders 12866, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under E.O. 12866. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purpose of E.O. 13132, SBA has determined that 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, this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act (RFA)

Because this rule is an interim final rule, there is no requirement for SBA to prepare an Initial Regulatory Flexibility Act analysis. The RFA requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule the agency must prepare analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required.

List of Subjects in 13 CFR Part 126

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 126 as follows:

PART 126—HUBZONE PROGRAM

■ 1. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p) and 657a.

■ 2. Revise § 126.309 to read as follows:

§ 126.309 May a declined or decertified concern seek certification at a later date?

A concern that SBA has declined or decertified may seek certification after ninety (90) calendar days from the date of decline or decertification if it believes that it has overcome all reasons for decline or decertification through changed circumstances and is currently eligible. A concern found to be ineligible during a HUBZone status protest is precluded from applying for HUBZone certification for ninety (90) calendar days from the date of the final agency decision (the D/HUB's decision if no appeal is filed or the decision of the AA/GCBD) pursuant to 13 CFR 126.803(d)(5).

■ 3. Amend § 126.803 by revising paragraph (d)(5) to read as follows:

§ 126.803 How will SBA process a HUBZone status protest?

* * * * *

(d) * * *

(5) A concern found to be ineligible is precluded from applying for HUBZone certification for ninety (90) calendar days from the date of the final agency decision (the D/HUB's decision if no appeal is filed or the decision of the AA/GCBD).

Dated: July 5, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–18329 Filed 7–20–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1285; Airspace Docket No. 10–AEA–27]

Amendment of Class E Airspace; Staunton, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E surface airspace extending upward from 700 feet above the surface at Shenandoah Valley Regional Airport, Staunton, VA. The Bridgewater Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed for the airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On March 18, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Shenandoah Valley Regional Airport, Staunton, VA (76 FR 14822) Docket No. FAA–2010–1285.

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 part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface to support new SIAPs developed at Shenandoah Valley Regional Airport, Staunton, VA. Airspace reconfiguration is necessary due to the decommissioning of the Bridgewater NDB and cancellation of the NDB approach.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is 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 Class E airspace at Staunton, VA.

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

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

* * * * *

AEA VA E5 Staunton, VA [Amended]

Shenandoah Valley Regional Airport, VA
(Lat. 38°15′50″ N., long. 78°53′47″ W.)
Bridgewater Air Park, VA
(Lat 38° 22′00″; N., long 78° 57′37″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Shenandoah Valley Regional Airport and within 4 miles either side of the 218° bearing from the airport extending from the 7.6-mile radius to16.4 miles southwest of the airport and within 4 miles either side of the 038° bearing from the airport extending from the 7.6-mile radius to 13.5 miles northeast of the airport and within a 8.3-mile radius of the Bridgewater Air Park and within 1.5 miles either side of the 338° bearing from the airport extending from the 8.3-mile radius to 10 miles northwest of the airport.

Issued in College Park, Georgia, on July 11, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–18169 Filed 7–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0047; Airspace Docket No. 11–AGL–1]

Amendment of Class E Airspace; Grand Marais, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Grand Marais, MN, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Grand Marais/Cook County Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, October 20, 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 May 18, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Grand Marais, MN, creating additional controlled airspace at Grand Marais/Cook County Airport (76 FR 28687) Docket No. FAA–2011–0047. 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 part 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 creating additional Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Grand Marais/Cook County Airport, Grand Marais, MN. This action is 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 for Grand Marais/Cook County Airport, Grand Marais, MN.

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 Part 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 of the earth.

* * * * *

AGL MN E5 Grand Marais, MN [Amended]

Grand Marais/Cook County Airport, MN
(Lat. 47°50′18″ N., long. 90°22′59″ W.)
Cook County NDB
(Lat. 47°50′24″ N., long. 90°23′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Grand Marais/Cook County Airport, and within 2 miles each side of the 275° bearing from the airport extending from the 6.4-mile radius to 8.3 miles west of the airport, and within 2.2 miles each side of the 104° bearing from the Cook County NDB extending from the 6.4-mile radius to 7 miles east of the airport, excluding that airspace which overlies P–204.

Issued in Fort Worth, Texas, on July 13, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–18126 Filed 7–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0046; Airspace Docket No. 11–ACE–1]

Amendment of Class E Airspace; Hannibal, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Hannibal, MO. Decommissioning of the Hannibal non-directional beacon (NDB) at Hannibal Regional Airport, Hannibal, MO, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport. This action also changes the airport name and updates the geographic coordinates of the airport.

DATES: *Effective date:* 0901 UTC, October 20, 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 May 18, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Hannibal, MO, reconfiguring controlled airspace at Hannibal Regional Airport (76 FR 28685) Docket No. FAA–2011–0046. 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 part 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 Hannibal, MO area. Decommissioning of the Hannibal NDB and cancellation of the NDB approach at Hannibal Regional Airport has made reconfiguration of the airspace necessary for the safety and management of IFR operations at the airport. This action also updates the airport name from ''Hannibal Municipal Airport'' to ''Hannibal Regional Airport'' and adjusts the geographic coordinates to coincide with the FAA's aeronautical database.

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

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

* * * * *

ACEMO E5 Hannibal, MO [Amended]

Hannibal Regional Airport, MO
(Lat. 39°43′31″ N., long. 91°26′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Hannibal Regional Airport.

Issued in Fort Worth, Texas, on July 13, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–18134 Filed 7–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0121; Airspace Docket No. 11–ACE–2]

Amendment of Class E Airspace; Fulton, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Fulton, MO. Decommissioning of the Guthrie non-directional beacon (NDB) at Elton Hensley Memorial Airport, Fulton, 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, October 20, 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 April 19, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Fulton, MO, reconfiguring controlled airspace at Elton Hensley Memorial Airport (76 FR 21825) Docket No. FAA–2011–0121. 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 part 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 Fulton, MO area. Decommissioning of the Guthrie NDB and cancellation of the NDB approach at Elton Hensley Memorial Airport has made reconfiguration of the airspace 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 Elton Hensley Memorial Airport, Fulton, 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 part 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 Fulton, MO [Amended]

Fulton, Elton Hensley Memorial Airport, MO
(Lat. 38°50′17″ N., long. 92°00′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Elton Hensley Memorial Airport.

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

Walter L. Tweedy,

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

[FR Doc. 2011–18139 Filed 7–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30793; Amdt. No. 3435]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 21, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 2011.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each

separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on July 8, 2011.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
25–Aug–11 ..	AR	El Dorado	South Arkansas Rgnl At Goodwin Field.	1/0073	6/30/11	ILS OR LOC RWY 22, Amdt 2A
25–Aug–11 ..	GA	Atlanta	Fulton County Airport—Brown Field.	1/0077	6/30/11	RNAV (GPS) RWY 26, Orig
25–Aug–11 ..	GA	Atlanta	Dekalb—Peachtree	1/0078	6/30/11	RNAV (GPS) Y RWY 20L, Orig-A
25–Aug–11 ..	GA	Atlanta	Fulton County Airport—Brown Field.	1/0080	6/30/11	VOR A, Orig
25–Aug–11 ..	GA	Atlanta	Fulton County Airport—Brown Field.	1/0081	6/30/11	RNAV (GPS) Y RWY 8, Orig
25–Aug–11 ..	SC	Winnsboro	Fairfield County	1/0112	6/30/11	NDB RWY 4, Amdt 3B
25–Aug–11 ..	SC	Winnsboro	Fairfield County	1/0113	6/30/11	RNAV (GPS) RWY 4, Orig
25–Aug–11 ..	SC	Winnsboro	Fairfield County	1/0114	6/30/11	RNAV (GPS) RWY 22, Orig
25–Aug–11 ..	OR	Albany	Albany Muni	1/7666	6/13/11	VOR/DME OR GPS A, Amdt 4
25–Aug–11 ..	OR	Albany	Albany Muni	1/7667	6/13/11	Takeoff Minimums and Obstacle DP, Amdt 2
25–Aug–11 ..	VA	Richmond/Ashland ...	Hanover County Muni	1/7754	6/29/11	LOC RWY 16, Amdt 3
25–Aug–11 ..	NY	Niagara Falls	Niagara Falls Intl	1/7756	6/29/11	ILS OR LOC RWY 28R, Amdt 22B
25–Aug–11 ..	KY	Somerset	Lake Cumberland Rgnl	1/7771	6/29/11	ILS OR LOC/DME RWY 5, Orig-A
25–Aug–11 ..	TN	Lawrenceburg	Lawrenceburg—Lawrence County.	1/8083	6/29/11	GPS RWY 17, Orig
25–Aug–11 ..	SC	Charleston	Charleston AFB/Intl	1/8371	7/6/11	VOR/DME OR TACAN RWY 33, Amdt 13
25–Aug–11 ..	SC	Charleston	Charleston AFB/Intl	1/8372	7/6/11	VOR/DME OR TACAN RWY 15, Amdt 14
25–Aug–11 ..	MN	Alexandria	Chandler Field	1/8440	7/6/11	ILS OR LOC RWY 31, Orig-A
25–Aug–11 ..	MO	St Louis	Lambert—St Louis Intl	1/8575	7/6/11	ILS OR LOC RWY 29, Amdt 1A
25–Aug–11 ..	VT	Burlington	Burlington Intl	1/8604	7/6/11	RNAV (GPS) Z RWY 15, Orig-B
25–Aug–11 ..	TN	Tullahoma	Tullahoma Rgnl Arpt/Wm Northern Field.	1/9123	7/6/11	VOR RWY 6, Orig-A
25–Aug–11 ..	OH	Chillicothe	Ross County	1/9437	7/6/11	RNAV (GPS) RWY 23, Orig
25–Aug–11 ..	OH	Chillicothe	Ross County	1/9438	7/6/11	VOR RWY 23, Amdt 3B
25–Aug–11 ..	MO	St Louis	Spirit of St Louis	1/9681	6/30/11	NDB RWY 8R, Amdt 11C
25–Aug–11 ..	MO	St Louis	Spirit of St Louis	1/9682	6/30/11	RNAV (GPS) RWY 26L, Orig
25–Aug–11 ..	MO	St Louis	Spirit of St Louis	1/9683	6/30/11	ILS OR LOC RWY 26L, Orig-A

[FR Doc. 2011–17974 Filed 7–20–11; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30792; Amdt. No. 3434]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 21, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 2011.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260 –5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on July 8, 2011.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 28 JUL 2011

Brunswick, ME, Brunswick Executive, RNAV (GPS) RWY 1R, Orig
Brunswick, ME, Brunswick Executive, RNAV (GPS) RWY 19L, Orig
Brunswick, ME, Brunswick Executive, Takeoff Minimums and Obstacle DP, Orig

Effective 25 AUG 2011

Allakaket, AK, Allakaket, RNAV (GPS) RWY 5, Amdt 1
Allakaket, AK, Allakaket, RNAV (GPS) RWY 23, Amdt 1
Dillingham, AK, Dillingham, RNAV (GPS) RWY 1, Amdt 2
Dillingham, AK, Dillingham, RNAV (GPS) RWY 19, Amdt 2
Hooper Bay, AK, Hooper Bay, RNAV (GPS) RWY 13, Amdt 1
Hooper Bay, AK, Hooper Bay, RNAV (GPS) RWY 31, Amdt 1
Nuiqsut, AK, Nuiqsut, RNAV (GPS) RWY 5, Amdt 1
Nuiqsut, AK, Nuiqsut, RNAV (GPS) RWY 23, Amdt 1
Palmer, AK, Palmer Muni, RNAV (GPS) RWY 9, Amdt 1
Toksook Bay, AK, Toksook Bay, RNAV (GPS) RWY 34, Amdt 2
Haleyville, AL, Posey Field, GPS RWY 36, Orig, CANCELLED
Haleyville, AL, Posey Field, RNAV (GPS) RWY 18, Orig
Haleyville, AL, Posey Field, RNAV (GPS) RWY 36, Orig
Haleyville, AL, Posey Field, VOR/DME RWY 18, Amdt 5
Haleyville, AL, Posey Field, VOR/DME–A, Amdt 4
Tuskegee, AL, Moton Field Muni, RNAV (GPS) RWY 13, Amdt 1
Tuskegee, AL, Moton Field Muni, RNAV (GPS) RWY 31, Amdt 1
Bullhead City, AZ, Laughln/Bullhead Intl, RNAV (GPS) RWY 16, Amdt 2
Fort Huachuca Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, RNAV (GPS) RWY 8, Amdt 1
Tucson, AZ, Marana Rgnl, RNAV (GPS) RWY 12, Amdt 1
Tucson, AZ, Marana Rgnl, RNAV (GPS) RWY 21, Amdt 1
Window Rock, AZ, Window Rock, RNAV (GPS) RWY 2, Amdt 1
Mojave, CA, Mojave, Takeoff Minimums and Obstacle DP, Amdt 2
Grand Junction, CO, Grand Junction Rgnl, RNAV (GPS) Y RWY 11, Amdt 1A
Grand Junction, CO, Grand Junction Rgnl, RNAV (RNP) Z RWY 11, Orig
Hayden, CO, Yampa Valley, RNAV (GPS) RWY 28, Amdt 2
Oxford, CT, Waterbury-Oxford, ILS OR LOC RWY 36, Amdt 14
Oxford, CT, Waterbury-Oxford, RNAV (GPS) RWY 36, Amdt 1
Willimantic, CT, Windham, RNAV (GPS) RWY 9, Amdt 1
Willimantic, CT, Windham, RNAV (GPS) RWY 27, Amdt 1
Cairo, GA, Cairo-Grady County, NDB RWY 13, Amdt 5
Cairo, GA, Cairo-Grady County, RNAV (GPS) RWY 13, Amdt 1
Cairo, GA, Cairo-Grady County, RNAV (GPS) RWY 31, Amdt 1
Douglas, GA, Douglas Muni, ILS OR LOC/NDB RWY 4, Amdt 2
Douglas, GA, Douglas Muni, RNAV (GPS) RWY 4, Amdt 1
Douglas, GA, Douglas Muni, RNAV (GPS) RWY 22, Amdt 1
Hana, HI, Hana, LINDBERG TWO Graphic DP
Kailua/Kona, HI, Kona Intl at Keahole, Takeoff Minimums and Ostacle DP, Amdt 5
Pocahontas, IA, Pocahontas Muni, NDB RWY 12, Amdt 5
Pocahontas, IA, Pocahontas Muni, RNAV (GPS) RWY 12, Orig
Pocahontas, IA, Pocahontas Muni, RNAV (GPS) RWY 30, Orig
Pocahontas, IA, Pocahontas Muni, Takeoff Minimums & Obstacle DP, Amdt 3
Bedford, IN, Virgil I Grissom Muni, GPS RWY 13, Orig, CANCELLED
Bedford, IN, Virgil I Grissom Muni, GPS RWY 31, Orig, CANCELLED
Bedford, IN, Virgil I Grissom Muni, RNAV (GPS) RWY 13, Orig
Bedford, IN, Virgil I Grissom Muni, RNAV (GPS) RWY 31, Orig
Bedford, IN, Virgil I Grissom Muni, VOR/DME RWY 31, Amdt 9, CANCELLED
Gary, IN, Gary/Chicago Intl, RNAV (GPS) Y RWY 12, Orig
Gary, IN, Gary/Chicago Intl, RNAV (GPS) Y RWY 30, Orig
Tell City, IN, Perry County Muni, NDB OR GPS RWY 13, Orig, CANCELLED
Tell City, IN, Perry County Muni, RNAV (GPS) RWY 13, Orig
Tell City, IN, Perry County Muni, RNAV (GPS) RWY 31, Orig
Tell City, IN, Perry County Muni, Takeoff Minimums & Obstacle DP, Amdt 2
Tell City, IN, Perry County Muni, VOR OR GPS RWY 31, Amdt 5, CANCELLED
Hazard, KY, Wendell H. Ford, RNAV (GPS) RWY 14, Amdt 1
Hazard, KY, Wendell H. Ford, RNAV (GPS) RWY 32, Orig
Springfield, KY, Lebanon-Springfield, NDB RWY 11, Orig, CANCELLED
Springfield, KY, Lebanon-Springfield, VOR/DME RWY 11, Amdt 4
Springhill, LA, Springhill, NDB RWY 36, Orig, CANCELLED
Springhill, LA, Springhill, RNAV (GPS) RWY 18, Orig
Springhill, LA, Springhill, RNAV (GPS) RWY 36, Orig
Springhill, LA, Springhill, Takeoff Minimums and Obstacle DP, Orig
Hyannis, MA, Barnstable Muni-Boardman/Polando Field, RNAV (GPS) RWY 33, Orig
Benton Harbor, MI, Southwest Michigan Rgnl, LOC BC RWY 9, Amdt 9A, CANCELLED
Benton Harbor, MI, Southwest Michigan Rgnl, NDB RWY 28, Amdt 10
Benton Harbor, MI, Southwest Michigan Rgnl, RNAV (GPS) RWY 10, Amdt 1
Benton Harbor, MI, Southwest Michigan Rgnl, RNAV (GPS) RWY 28, Orig
Benton Harbor, MI, Southwest Michigan Rgnl, Takeoff Minimums and Obstacle DP, Amdt 7
Benton Harbor, MI, Southwest Michigan Rgnl, VOR RWY 10, Amdt 10
Benton Harbor, MI, Southwest Michigan Rgnl, VOR RWY 28, Amdt 19
Holland, MI, Tulip City, RNAV (GPS) RWY 8, Amdt 2
Port Huron, MI, St. Clair County Intl, Takeoff Minimums and Obstacle DP, Amdt 6
McComb, MS, McComb/Pike County/John E Lewis Field, RNAV (GPS) RWY 15, Amdt 1
Raymond, MS, John Bell Williams, ILS OR LOC RWY 12, Orig
Raymond, MS, John Bell Williams, NDB RWY 12, Amdt 2
Raymond, MS, John Bell Williams, RNAV (GPS) RWY 12, Amdt 2
Raymond, MS, John Bell Williams, RNAV (GPS) RWY 30, Amdt 2
Raymond, MS, John Bell Williams, Takeoff Minimums & Obstacle DP, Amdt 4
Bozeman, MT, Gallatin Field, RNAV (GPS) –A, Amdt 2
Forsyth, MT, Tillitt Field, GPS RWY 26, Orig, CANCELLED
Forsyth, MT, Tillitt Field, RNAV (GPS) RWY 26, Orig,
Glendive, MT, Dawson Community, NDB RWY 12, Amdt 4B
Glendive, MT, Dawson Community, RNAV (GPS) RWY 12, Orig
Glendive, MT, Dawson Community, RNAV (GPS) RWY 30, Orig
Glendive, MT, Dawson Community, Takeoff Minimums & Obstacle DP, Orig
Miles City, MT, Frank Wiley Field, RNAV (GPS) RWY 4, Amdt 2
Miles City, MT, Frank Wiley Field, RNAV (GPS) RWY 22, Orig
Miles City, MT, Frank Wiley Field, VOR/DME RWY 22, Amdt 8B
Hickory, NC, Hickory Rgnl, HICKORY TWO Graphic DP
Roanoke Rapids, NC, Halifax-Northampton Rgnl, RNAV (GPS) RWY 2, Amdt 1
Roanoke Rapids, NC, Halifax-Northampton Rgnl, RNAV (GPS) RWY 20, Amdt 1
Sanford, NC, Raleigh Exec Jetport at Sanford-Lee County, ILS OR LOC RWY 3, Amdt 1
Sanford, NC, Raleigh Exec Jetport at Sanford-Lee County, RNAV (GPS) RWY 3, Amdt 1

Sanford, NC, Raleigh Exec Jetport at Sanford-Lee County, RNAV (GPS) RWY 21, Amdt 1
Sanford, NC, Raleigh Exec Jetport at Sanford-Lee County, Takeoff Minimums and Obstacle DP, Amdt 1
Rugby, ND, Rugby Muni, GPS RWY 12, Orig, CANCELLED
Rugby, ND, Rugby Muni, GPS RWY 30, Orig-B, CANCELLED
Rugby, ND, Rugby Muni, RNAV (GPS) RWY 12, Orig
Rugby, ND, Rugby Muni, RNAV (GPS) RWY 30, Orig
Rugby, ND, Rugby Muni, Takeoff Minimums and Obstacle DP, Orig
Chadron, NE, Chadron Muni, ILS OR LOC RWY 2, Amdt 2
Chadron, NE, Chadron Muni, RNAV (GPS) RWY 2, Orig-A
Chadron, NE, Chadron Muni, RNAV (GPS) RWY 11, Orig
Chadron, NE, Chadron Muni, RNAV (GPS) RWY 20, Amdt 1
Chadron, NE, Chadron Muni, RNAV (GPS) RWY 29, Orig
Chadron, NE, Chadron Muni, Takeoff Minimums and Obstacle DP, Orig
Chadron, NE, Chadron Muni, VOR/DME RWY 2, Amdt 2A, CANCELLED
Chadron, NE, Chadron Muni, VOR/DME RWY 20, Orig-A, CANCELLED
Hartington, NE, Hartington Muni, GPS RWY 13, Orig, CANCELLED
Hartington, NE, Hartington Muni, GPS RWY 31, Orig, CANCELLED
Hartington, NE, Hartington Muni/Bud Becker Fld, RNAV (GPS) RWY 13, Orig
Hartington, NE, Hartington Muni/Bud Becker Fld, RNAV (GPS) RWY 31, Orig
Hartington, NE, Hartington Muni/Bud Becker Fld, Takeoff Minimums and Obstacle DP, Orig
Manville, NJ, Central Jersey Rgnl, RNAV (GPS) RWY 25, Amdt 1A
Morristown, NJ, Morristown Muni, RNAV (GPS) Z RWY 23, Orig-A
Morristown, NJ, Morristown Muni, RNAV (RNP) Y RWY 23, Orig
Albany, NY, Albany Intl, COPTER ILS OR LOC/DME RWY 1, Amdt 1, CANCELLED
Albany, NY, Albany Intl, GPS RWY 10, Orig, CANCELLED
Albany, NY, Albany Intl, GPS RWY 28, Orig-B, CANCELLED
Albany, NY, Albany Intl, ILS OR LOC RWY 1, ILS RWY 1 (SA CAT II), Amdt 11
Albany, NY, Albany Intl, ILS OR LOC RWY 19, Amdt 23
Albany, NY, Albany Intl, RNAV (GPS) RWY 10, Orig
Albany, NY, Albany Intl, RNAV (GPS) RWY 28, Orig
Albany, NY, Albany Intl, RNAV (GPS) Y RWY 1, Amdt 1
Albany, NY, Albany Intl, RNAV (GPS) Y RWY 19, Amdt 1
Albany, NY, Albany Intl, RNAV (RNP) Z RWY 1, Orig
Albany, NY, Albany Intl, RNAV (RNP) Z RWY 19, Orig
Albany, NY, Albany Intl, Takeoff Minimums and Obstacle DP, Amdt 12
Buffalo, NY, Buffalo Airfield, RNAV (GPS) RWY 6, Orig
Buffalo, NY, Buffalo Airfield, RNAV (GPS) RWY 24, Amdt 1
New York, NY, La Guardia, ILS OR LOC RWY 22, ILS RWY 22 (SA CAT I), ILS RWY 22 (SA CAT II), Amdt 20
Eugene, OR, Mahlon Sweet Field, RNAV (GPS) Y RWY 16L, Amdt 2
Eugene, OR, Mahlon Sweet Field, RNAV (GPS) Y RWY 16R, Amdt 1
Eugene, OR, Mahlon Sweet Field, RNAV (GPS) Y RWY 34L, Amdt 2
Eugene, OR, Mahlon Sweet Field, RNAV (GPS) Y RWY 34R, Amdt 2
Eugene, OR, Mahlon Sweet Field, RNAV (RNP) Z RWY 16L, Orig
Eugene, OR, Mahlon Sweet Field, RNAV (RNP) Z RWY 16R, Orig
Eugene, OR, Mahlon Sweet Field, RNAV (RNP) Z RWY 34L, Orig
Eugene, OR, Mahlon Sweet Field, RNAV (RNP) Z RWY 34R, Orig
Redmond, OR, Roberts Field, RNAV (GPS) Y RWY 4, Orig-A
Redmond, OR, Roberts Field, RNAV (GPS) Y RWY 22, Orig-A
Redmond, OR, Roberts Field, RNAV (RNP) Z RWY 4, Orig
Redmond, OR, Roberts Field, RNAV (RNP) Z RWY 22, Orig
Meadville, PA, Port Meadville, RNAV (GPS) RWY 7, Amdt 1
Meadville, PA, Port Meadville, RNAV (GPS) RWY 25, Amdt 1
Philadelphia, PA, Philadelphia Intl, ILS OR LOC RWY 26, Amdt 4
Philadelphia, PA, Philadelphia Intl, ILS PRM RWY 26 (Sim. Close Parallel), Amdt 4
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 26, Amdt 1
Miller, SD, Miller Muni, GPS RWY 15, Orig, CANCELLED
Miller, SD, Miller Muni, GPS RWY 33, Orig, CANCELLED
Miller, SD, Miller Muni, RNAV (GPS) RWY 15, Orig
Miller, SD, Miller Muni, RNAV (GPS) RWY 33, Orig
Sioux Falls, SD, Joe Foss Field, ILS OR LOC RWY 21, Amdt 10
Sioux Falls, SD, Joe Foss Field, RNAV (GPS) RWY 3, Amdt 1
Sioux Falls, SD, Joe Foss Field, RNAV (GPS) RWY 21, Amdt 1
Alpine, TX, Alpine-Casparis Muni, GPS RWY 19, Orig-A, CANCELLED
Alpine, TX, Alpine-Casparis Muni, RNAV (GPS) RWY 19, Orig
Bonham, TX, Jones Field, RNAV (GPS) RWY 17, Amdt 2
Bonham, TX, Jones Field, RNAV (GPS) RWY 35, Amdt 1
Bonham, TX, Jones Field, Takeoff Minimums and Obstacle DP, Amdt 2
El Paso, TX, El Paso Intl, RNAV (GPS) Y RWY 22, Orig-C
El Paso, TX, El Paso Intl, RNAV (RNP) Z RWY 22, Orig
El Paso, TX, El Paso Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Fort Worth, TX, Fort Worth Alliance, ILS OR LOC RWY 34R, Amdt 6
San Antonio, TX, San Antonio Intl, RNAV (RNP) Z RWY 21, Orig-A
Sulphur Springs, TX, Sulphur Springs Muni, RNAV (GPS) RWY 1, Amdt 1
Sulphur Springs, TX, Sulphur Springs Muni, RNAV (GPS) RWY 19, Orig
Winters, TX, Winters Muni, NDB OR GPS RWY 35, Orig-A, CANCELLED
Winters, TX, Winters Muni, RNAV (GPS) RWY 17, Orig
Winters, TX, Winters Muni, RNAV (GPS) RWY 35, Orig
Winters, TX, Winters Muni, Takeoff Minimums and Obstacle DP, Orig
Richland, WA, Richland, VOR RWY 26, Amdt 7A, CANCELLED
Wenatchee, WA, Pangborn Memorial, RNAV (RNP) RWY 12, Orig-B
Sparta, WI, Sparta/Fort McCoy, RNAV (GPS) RWY 29, Amdt 1
Laramie, WY, Laramie Rgnl, RNAV (GPS) RWY 3, Orig
Laramie, WY, Laramie Rgnl, RNAV (GPS) RWY 21, Orig

[FR Doc. 2011–17984 Filed 7–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2007–N–0092] (Formerly Docket No. 2007N–0308)

Cardiovascular Devices; Classification of Electrocardiograph Electrodes

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the electrocardiograph electrode, intended to acquire and transmit the electrical signal at the body surface to a processor that produces an electrocardiogram (ECG) or vectorcardiogram, into class II (special controls). FDA is also exempting this device from the premarket notification requirement.

DATES: This rule is effective August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Sharon Lappalainen, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1238, Silver Spring, MD 20993, 301–796–6322.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), and the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Pub. L. 107–250), established a comprehensive system for the regulation

of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, defined by the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as ''preamendments devices.'' FDA classifies these devices after it takes the following steps: (1) Receives a recommendation from a device classification panel (an FDA advisory committee); (2) publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) publishes a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution before May 28, 1976, generally referred to as postamendments devices, are classified automatically under section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III until FDA does the following: (1) Reclassifies the device into class I or II; (2) issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the FD&C Act; or (3) issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a legally marketed device that has been classified into class I or class II.

The Agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations. FDAMA added a new section 510(m) to the FD&C Act. New section 510(m) provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the FD&C Act, if the Agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device. FDA has determined that premarket notification is not necessary to assure the safety and effectiveness of electrocardiograph electrodes.

Under the 1976 amendments, class II devices were defined as devices for which there was insufficient information to show that general controls themselves would provide reasonable assurance of safety and effectiveness, but for which there was sufficient information to establish performance standards to provide such assurance. SMDA broadened the definition of class II devices to mean those devices for which the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions FDA deems necessary (section 513(a)(1)(B) of the FD&C Act). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control for this device. This action is being taken under the FD&C Act, as amended by the 1976 amendments, SMDA, FDAMA, and MDUFMA.

II. Regulatory History of the Device

In the **Federal Register** of October 4, 2007 (72 FR 56702; Docket No. 2007N–0308), FDA proposed to classify electrocardiograph electrodes, intended to acquire and transmit the electrical signal at the body surface to a processor that produces an electrocardiogram (ECG) or vectorcardiogram, into class II. FDA also proposed to exempt this device from premarket notification requirements. FDA invited interested persons to comment on the proposed regulation by January 2, 2008. FDA received seven comments on the proposed rule.

III. Summary of Final Rule

FDA is amending the classification regulation for electrocardiograph electrodes into class II, by making this device exempt from 510(k) premarket notification requirements and subject to the new special controls described in the special controls guidance document entitled ''Guidance for Industry and Food and Drug Administration Staff: Class II Special Controls Guidance Document: Electrocardiograph Electrodes.''

As described in that special controls guidance document, the special controls include the following:

- Documentation of device description, which includes compliance with 21 CFR 820.181(a) to maintain a device master record;
- Documentation of performance characteristics, which includes documentation on biocompatibility, electrical performance, adhesive performance, shelf life, reuse, electrodes intended for use in specified procedures, sterility, and, with respect to electrode lead wires and patient cables, compliance with 21 CFR part 898; and
- Specific labeling, including indications for use, cautions, precautions, and adverse reactions.

Manufacturers must comply with the special controls as identified in that special controls guidance document, either by meeting the recommendations in the guidance document or by some other means that provides equivalent assurance of safety and effectiveness.

IV. Discussion of Comments

The public comments received in response to the proposed rule addressed issues pertaining to labeling, the scope of the devices subject to the classification rule, and testing as follows:

Regarding labeling, the comments requested the mandatory product labeling of all adhesive coated disposable electrocardiograph electrodes and the establishment of template labeling with which electrocardiograph electrodes should comply. In response, FDA has revised the labeling section of the special controls guidance document; however, FDA has not established template labeling.

Regarding the scope of the devices subject to the notice, the comments requested a products-based definition or listing of examples to flesh out the ''type'' of devices that are consistent with Agency intent, requested a clarification of the type of sensor that is included in the scope of the classification, and requested a clarification if the list of environmental conditions is intended to be an exclusive list. In response, FDA has revised the special controls guidance document to clarify what the scope of this classification rule includes and excludes and to clarify what labeling should be reported regarding conditions of use.

Regarding testing, the comments requested clarification of the shelf life, storage condition testing, and human clinical testing required to establish sensitivity and irritation for all adhesives. In response, FDA has revised the special controls guidance document to clarify testing for shelf life and has clarified the testing for biocompatibility.

FDA is adopting in final form the assessment of the risks to public health stated in the proposed rule published on October 4, 2007, and agrees that the risk of electrical shock should also be taken

into account for purposes of this assessment. The guidance document has been revised accordingly. FDA is issuing this final rule which classifies the generic type of device, electrocardiograph electrode, into class II subject to special controls.

V. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under the Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because manufacturers are already substantially in compliance with the recommendations in the guidance document and exemption from the premarket notification requirements for the devices following the specific measures recommended in the special control will simplify the entry to market for other manufacturers, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or state, local, and tribal governments in the aggregate, and therefore a written statement under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

The specific measures recommended largely reflect current practices. With most manufacturers complying with most of the recommendations in the guidance document, any additional burden brought about by the final rule and guidance will likely be small.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to ''construe* * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts certain state requirements ''different from or in addition to'' certain Federal requirements applicable to devices. 21 U.S.C. 360k. See *Medtronic* v. *Lohr,* 518 U.S. 470 (1996); and *Riegel* v. *Medtronic,* 552 U.S. 312 (2008). The special controls established by this final rule create ''requirements'' to address each identified risk to health presented by these specific medical devices under 21 U.S.C. 360k, even though product sponsors may have flexibility in how they meet those requirements Cf. *Papike* v. *Tambrands, Inc.,* 107 F.3d 737, 740–42 (9th Cir. 1997).

VIII. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no new collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

This final rule designates a guidance document as a special control. FDA also concludes that the special control guidance document does not contain new information collection provisions that are subject to review and clearance by OMB under the PRA.

IX. Electronic Access

For access to the docket to read references or the public comments received, go to *http://www.regulations.gov* or go to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A hard copy of any document can be obtained by submitting a Freedom of Information Act request to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

X. References

The following references have been placed on display in the Division of Dockets Management (see section IX of this document) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, or can be obtained in hardcopy by submitting a Freedom of Information Act request to the Division of Freedom of Information (see section IX of this document). (FDA has verified the Web site address, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register.**)

1. ''Class II Special Controls Guidance Document: Electrocardiograph Electrodes.''
2. ANSI/AAMI/ISO 10993–1, ''Biological Evaluation of Medical Devices—Part 1: Evaluation and Testing.''
3. ISO 10993–5, ''Biological Evaluation of Medical Devices—Part 5: Tests for In Vitro Cytotoxicity.''
4. ISO 10993–10, ''Biological Evaluation of Medical Devices—Part 10: Tests for Irritation and Delayed Type Hypersensitivity.''
5. ANSI/AAMI EC12, ''Disposable ECG Electrodes.''
6. AAMI/ANSI/ISO ST79, ''Comprehensive Guide to Steam Sterilization and Sterility Assurance in Health Care Facilities.''
7. ''Updated 520(k) Sterility Review Guidance K90–1.''
8. IEC 601–1.56.3(c), ''Medical Electrical Equipment—Part 1, General Requirements for Safety.''
9. ANSI/AAMI EC53, ''ECG Cables and Leadwires.''
10. FDA Guidance 89–4203, ''Labeling—Regulatory Requirements for Medical Devices,'' available at *http://www.fda.gov/cdrh/dsma/470.pdf.*

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Revise paragraph (b) in § 870.2360 to read as follows:

§ 870.2360 Electrocardiograph electrode.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9. The special control for this device is the FDA guidance document entitled ''Class II Special Controls Guidance Document: Electrocardiograph Electrodes.'' See § 870.1(e) for availability information of guidance documents.

Dated: July 18, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–18391 Filed 7–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1010, 1021 and 1022

RIN 1506–AA97

Bank Secrecy Act Regulations; Definitions and Other Regulations Relating to Money Services Businesses

AGENCY: Treasury Department, Financial Crimes Enforcement Network (FinCEN).

ACTION: Final rule.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN''), a bureau of the Department of the Treasury (''Treasury''), is revising the regulations implementing the Bank Secrecy Act (''BSA'') regarding money services businesses (''MSBs'') to clarify which entities are covered by the definitions.

The changes more clearly delineate the scope of entities regulated as MSBs, so that determining which entities are obligated to comply is more straightforward and predictable. This rulemaking amends the current MSB regulations by: ensuring that certain foreign-located persons engaging in MSB activities within the United States are subject to the BSA rules; updating the MSB definitions to reflect past guidance and rulings, current business operations, evolving technologies, and merging lines of business; and separating the provisions dealing with stored value from those dealing with issuers, sellers, and redeemers of traveler's checks and money orders.

DATES: *Effective Date:* This rule is effective September 19, 2011. *Compliance Date:* The compliance date for the amendments to 31 CFR 1022.380 is January 23, 2012.

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 1.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

The BSA, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, authorizes the Secretary of the Treasury (the ''Secretary'') to issue regulations requiring financial institutions to keep records and file reports that the Secretary determines ''have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence matters, including analysis, to protect against international terrorism.'' [1] In addition, the Secretary is authorized to impose anti-money laundering (''AML'') program requirements on financial institutions.[2] The Secretary's authority to administer the BSA has been delegated to the Director of FinCEN.[3] FinCEN has implemented the BSA through regulations (''BSA regulations,'' ''implementing regulations'' or ''BSA rules'') that appear at 31 CFR Chapter X.[4]

The BSA defines the term ''financial institution'' to include, in part: a currency exchange; an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments; the United States Postal Service; a person who engages as a business in the transmission of funds; and any business or agency which engages in any activity determined by regulation to be an activity similar to, related to, or a substitute for these activities.[5]

FinCEN has issued regulations under the BSA implementing the recordkeeping, reporting, and other requirements of the BSA with respect to these types of financial institutions. These regulations refer to these types of financial institutions as ''money services businesses'' (''MSBs'').[6] Like other financial institutions under the BSA, MSBs must implement AML programs, make certain reports to FinCEN, and maintain certain records to facilitate financial transparency. MSBs are generally required to: (1) Establish written AML programs that are reasonably designed to prevent the MSB from being used to facilitate money laundering and the financing of terrorist activities; [7] (2) file Currency Transaction Reports (''CTRs'') [8] and Suspicious Activity Reports (''SARs''); [9] and (3) maintain certain records, including those relating to the purchase of certain monetary instruments with currency,[10] transactions by currency dealers or exchangers (to be called ''dealers in foreign exchange'' under this rulemaking),[11] and certain transmittals of funds.[12] Most types of MSBs are required to register with FinCEN [13] and all are subject to examination for BSA compliance by the Internal Revenue Service (''IRS'').[14]

B. Past Public MSB Meetings

In 1997, FinCEN held public meetings to give members of the financial services industry an opportunity to discuss the proposed MSB regulations and any impact they might have on operations.[15]

[1] 31 U.S.C. 5311.

[2] 31 U.S.C. 5318(h).

[3] *See* Treasury Order 180–01 (Sept. 26, 2002).

[4] On October 26, 2010, FinCEN issued a final rule creating a new Chapter X in title 31 of the Code of Federal Regulations for the BSA regulations. *See* 75 FR 65806 (October 26, 2010) (Transfer and Reorganization of Bank Secrecy Act Regulations Final Rule) (referred to herein as the ''Chapter X Final Rule''). The Chapter X Final Rule became effective on March 1, 2011. Because the Notice of Proposed Rulemaking, Definitions and Other Regulations Relating to Money Services Businesses, 74 FR 22129 (May 12, 2009), was issued before the Chapter X Final Rule became effective, it was proposed in the 31 CFR Part 103 format. In this Final Rule, for ease of reference and where appropriate, we have included the former 31 CFR Part 103 citation after the 31 CFR Chapter X regulatory citation.

[5] 31 U.S.C. 5312(a)(2)(J), (K), (R), (V), and (Y).

[6] *See* 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)).

[7] *See* 31 CFR 1022.210 (formerly 31 CFR 103.125).

[8] *See* 31 CFR 1010.311 (formerly 31 CFR 103.22).

[9] *See* 31 CFR 1022.320 (formerly 31 CFR 103.20). Check cashers and transactions solely involving the issuance, sale, or redemption of stored value are not covered by the SAR requirement. *See* 31 CFR 1022.320(a)(1), (5) (formerly 31 CFR 103.20(a)(1), (5). FinCEN recently proposed imposing a SAR requirement with respect to transactions involving stored value. *See* Notice of Proposed Rulemaking, Amendment to the Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Prepaid Access, 75 FR 36589 (June 28, 2010).

[10] *See* 31 CFR 1010.415 (formerly 31 CFR 103.29).

[11] *See* 31 CFR 1022.410 (formerly 31 CFR 103.37).

[12] *See* 31 CFR 1010.410(e)–(f) (formerly 31 CFR 103.33(f)–(g)).

[13] *See* 31 CFR 1022.380 (formerly 31 CFR 103.41).

[14] *See* 31 CFR 1010.810(b) (formerly 31 CFR 103.56(b)(8)).

[15] These public meetings were held in Vienna, Virginia, on July 22, 1997; New York, New York,

Continued

In drafting the final rules defining the MSB categories,[16] FinCEN relied in part on the comments made in these public forums.

On March 8, 2005, FinCEN held a fact-finding meeting in Washington, DC on the provision of banking services to MSBs.[17] MSBs recounted their challenges in obtaining and maintaining banking services due to the perception that their businesses posed a high risk of money laundering and terrorist financing. In 2006, FinCEN issued an advance notice of proposed rulemaking seeking input on how to address these challenges,[18] and received 142 comments in response, which have informed this rulemaking.[19]

C. Need for Review and Updates

More than ten years have passed since FinCEN issued the BSA regulations defining the categories of MSBs.[20] Since that time, FinCEN has received numerous requests to apply the MSB regulations to fact patterns specific to particular businesses. Over one-third of these requests came from persons inquiring whether or not they were an MSB.[21] Some of these requests for guidance were prompted by significant technological advances such as stored value products and the online provision of financial services. These and other developments have changed the nature of the MSB industry. Where possible, FinCEN has provided guidance to the industry on how to interpret and apply the regulations.

With respect to check cashers and money transmitters in particular, FinCEN has developed a large body of guidance in the years since the issuance of the final MSB regulations in 1999.[22] Similarly, over the years, FinCEN has issued guidance and administrative rulings that provide examples of activities that do not meet the regulatory definition of a money transmitter, even though entities engaged in such activities may be involved in accepting and transmitting funds.[23] Given the nature and scope of these important interpretative rulings, FinCEN has updated, streamlined, and clarified the MSB regulations in this rulemaking by incorporating and extending these interpretations in the regulatory revisions.

II. Notice of Proposed Rulemaking

The final rule contained in this document is based on the Notice of Proposed Rulemaking ''Definitions and Other Regulations Relating to Money Services Businesses'' published in the Federal Register on May 12, 2009 (the ''Notice'').[24] With the intent of more clearly delineating the scope of entities regulated as MSBs, the Notice proposed a number of changes to the MSB definitions, in particular: (1) Emphasizing that the MSB definition is based on a person's activities; (2) ensuring that certain foreign-located persons engaged in MSB activities within the United States, such as having customers located in the United States, are subject to the BSA rules; (3) separating the provisions dealing with stored value from those dealing with issuers, sellers, and redeemers of traveler's checks and money orders; (4) deferring the proposal of a new definition of stored value to a separate rulemaking; and (5) combining the definitions in 31 CFR 1010.100(ff)(3) (formerly 31 CFR 103.11(uu)(3)) and 31 CFR 1010.100(ff)(4) (formerly 31 CFR 103.11(uu)(4)) into one paragraph dealing with both issuers and sellers of traveler's checks and money orders excluding stored value. The Notice also specifically requested comment on a number of aspects of the proposed changes, particularly with respect to a definition of the term ''funds,'' aggregating multiple MSB services for threshold purposes, foreign-located MSBs, thresholds, and stored value. The Notice also proposed a number of minor edits to make the regulations more readable.

III. Comments on the Notice—Overview and General Issues

The comment period for the Notice ended on September 9, 2009. FinCEN received a total of 25 comment letters.[25] Of these, two were submitted by depository institutions, eight by industry associations, seven by various industry participants, two by government agencies, and six by individuals. Generally, commenters were supportive of the proposals to clarify the MSB definitions. FinCEN requested comment on a number of issues for informational purposes that are not addressed by this final rule, such as stored value-related issues, whether check cashers should have SAR filing requirements and whether additional recordkeeping requirements for MSBs should be implemented. Although these requests for comment were not tied to any specific regulatory changes FinCEN was proposing in the Notice, the information provided by commenters can be useful to FinCEN in formulating policy decisions in the future. FinCEN values and appreciates the comments received on these questions.

Stored Value-Related Issues [26]

Approximately half of the comments received in response to the Notice addressed stored value-related issues that responded to questions and requests for comment posed in the Notice. The questions were intended to elicit responses that would assist FinCEN's effort to regulate stored value.

on July 28, 1997; San Jose, California, on August 1, 1997; Chicago, Illinois, on August 15, 1997; and Vienna, Virginia, on September 3, 1997. The discussions focused on how businesses operate and how best to regulate them.

[16] Definitions Relating to, and Registration of, Money Services Businesses, 64 FR 45438 (Aug. 20, 1999) (''1999 Rulemaking'').

[17] FinCEN conducted the meeting in conjunction with the Non-bank Financial Institutions and Examination Subcommittees of the Bank Secrecy Act Advisory Group (''BSAAG''). BSAAG is an advisory group created by the Annunzio-Wylie Anti-Money Laundering Act, consisting of industry, regulatory, and law enforcement participants for the purpose of engaging in open dialogue related to the protection of the U.S. financial system from money laundering, terrorist financing, and other abuses. BSAAG uses a variety of permanent and ad hoc subcommittees to identify and analyze relevant issues. Public Law 102–550, Title XV, sec. 1564 (Oct. 28, 1992), 106 Stat. 4073.

[18] Provision of Banking Services to Money Services Businesses, 71 FR 12308 (March 10, 2006).

[19] These comments are available in files dated March 10 and May 15, 2006 at *http://www.fincen.gov/statutes_regs/bsa/regs_proposal_comment.html.*

[20] *See* 1999 Rulemaking, 64 FR 45438 (Aug. 20, 1999). For a discussion of this history, *see also* the Notice of Proposed Rulemaking FinCEN; Amendment to the Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Money Services Businesses, 74 FR 22129, 22131 (May 12, 2009).

[21] This statistic comes from a review of requests for guidance from FinCEN's Regulatory Helpline.

[22] *See* FinCEN Ruling 2002–2 (Definition of Check Casher (Payday Lenders)) (Feb. 5, 2002) and FinCEN Guidance 2006–G005 (Frequently Asked Questions—Businesses Cashing Their Own Checks) (March 31, 2006). For a discussion of this guidance, *see* Notice, 74 FR at 22131.

[23] *See* FinCEN Rulings: 2003–8 (Definition of Money Transmitter (Merchant Payment Processor)) (Nov. 19, 2003); 2004–4 (Definition of Money Services Businesses (Debt Management Company)) (Nov. 24, 2004); 2008–R005 (Whether Certain Reloadable Card Operations are Money Services Businesses) (March 10, 2008) (Merchants and ATMs associated with a network of banks were not deemed money transmitters); and 2008–R006 (Whether an Authorized Agent for the Receipt of Utility Payments is a Money Transmitter) (May 21, 2008). For a discussion of these rulings, *see* Notice, 74 FR at 22131–2.

[24] *See* 74 FR 22129 (May 12, 2009).

[25] All comments to the Notice are available for public viewing at *http://www.regulations.gov.*

[26] In June 2010 FinCEN proposed replacing the term ''stored value'' with ''prepaid access'' without intending to broaden or narrow the scope of the term, but instead to use terminology commonly used by the industry. *See* Notice of Proposed Rule Making, Amendment to the Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Prepaid Access, 75 FR 36589 (June 28, 2010). At the time the Notice was issued, FinCEN had not yet proposed changing the terminology. This final rule uses the term ''stored value.'' Any changes in defined terms will be addressed in a subsequent rulemaking regarding prepaid access.

On May 22, 2009, shortly after the Notice was published, the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (''Credit CARD Act'')[27] was signed into law. Section 503 of the Credit CARD Act requires the Secretary to ''issue regulations in final form implementing the Bank Secrecy Act, regarding the sale, issuance, redemption, or international transport of stored value, including stored value cards.'' The congressional mandate of Section 503 of the Credit CARD Act is broader in scope than the stored value-related questions posed in the Notice.

In furtherance of that mandate, FinCEN has separately published a notice of proposed rulemaking specific to stored value, which FinCEN has proposed to rename ''prepaid access'' (the ''Prepaid Access NPRM'').[28] FinCEN believes that to address stored value-related issues in this MSB rule could cause confusion among the public. Accordingly, FinCEN has decided to comprehensively address stored value-related issues in the pending Prepaid Access rulemaking, generally including those stored value-related issues raised in the Notice. The comments received in response to the Notice provided valuable insights and were considered in drafting the Prepaid Access NPRM.

Definition of ''Money Transmitter''

In the Notice, FinCEN proposed to revise several portions of the current definition of ''money transmitter'' to clarify which activities are covered by or excluded from the definition. Most commenters generally supported the proposed changes. All commenters supported excluding from the definition of ''money transmitter'' persons that have only a ''custodial interest'' in currency they are transporting.[29] One commenter construed the definition of ''money transmitter'' to exclude the agents of a principal money transmitter. FinCEN wishes to clarify that any person that satisfies the definition of a ''money services business,'' including an agent, is an MSB. Whether it is the agent of another MSB is relevant only for registration purposes. Two commenters suggested additional exclusions to the definition of ''money transmitter'' for intermediaries and certain bill payment services. The suggestions regarding intermediaries and certain bill payment services are discussed further in the Section-by-Section Analysis.

Definition of ''Currency Dealer or Exchanger''

In the Notice, FinCEN proposed to make several changes to the definition of ''currency dealer or exchanger'' (to be called ''dealers in foreign exchange'' under this rulemaking) to more accurately reflect the actual underlying activity of the industry. Eight commenters addressed various issues related to this definition. Most commenters supported the proposed changes. As a result, the proposal was adopted without change. These comments are further discussed in the Section-by-Section Analysis below.

FinCEN received a comment letter from the Commodity Futures Trading Commission (''CFTC'') regarding certain amendments recently made to the Commodity Exchange Act (''CEA''), which, among other things, adds a new registration category for dealers in off-exchange retail foreign exchange known as ''retail foreign exchange dealers'' (''RFEDs'').[30] MSBs, including dealers in foreign exchange, do not include persons registered with, and regulated or examined by, the CFTC. FinCEN is considering the CFTC's comments and has decided that it would not be appropriate to address the issue of RFEDs in this rulemaking.

IV. Section-by-Section Analysis

A. Refining the General Definition of ''Money Services Business'' Doing Business

Prior to this rulemaking, the regulatory definition of MSB covered ''[e]ach agent, agency, branch or office within the United States of any person *doing business,* whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(6) of this section.''[31] In the Notice, FinCEN proposed to amend 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)) by removing the phrase ''doing business,'' and replacing it with the phrase ''engaged in activities.'' FinCEN proposed this amendment because the phrase ''doing business'' has been misunderstood as an implied reference to the status that an entity has taken on itself or been assigned, such as a business licensed by a state. Based on such a misunderstanding, some have wrongly concluded that an unlicensed business is not subject to regulation as an MSB, even if it is engaged in one or more of the activities listed in 31 CFR 1010.100(ff)(1)–(5). Most of the comments received regarding the proposed change were supportive. However, although FinCEN emphasized in the Notice that the proposed change would not expand the definition of MSB beyond its present scope, two commenters expressed concerns about this proposed change.

One commenter argued that removing the phrase ''doing business'' from the regulations would cause the definition of MSB to include persons who were not in fact doing business as MSBs, and asserted that expanding the category to this extent would be beyond FinCEN's powers under the BSA, which specifically refers to several types of financial institutions as ''businesses'' in several places.[32]

FinCEN will not remove the phrase ''doing business'' from the definition of MSB in this final rule. Instead, the definition will be rephrased to state that an MSB is ''[a] person wherever located doing business, *whether or not on a regular basis or as an organized or licensed business concern,* wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(6) of this section.'' We moved the qualifying phrase ''whether or not on a regular basis or as an organized business concern'' from the end of the sentence to immediately follow ''doing business'' in an effort to emphasize our concern that ''doing business'' can be misinterpreted to refer to status, not activity. To that end, the words ''or licensed'' have been added before ''business concern'' to further clarify the issue.

FinCEN wishes to emphasize that whether a person is subject to regulation as an MSB does not depend on factors such as whether the person is licensed as a business by any state; whether the person has employees; or whether the person is engaged in a for-profit venture. Although the final rule continues to use the phrase ''doing business,'' it is a person's activities, rather than formal business status, that would cause the person to be categorized as an MSB.

Another commenter suggested that the change proposed by the Notice might expand the definition of MSB to

[27] The Credit CARD Act, Public Law 111–24, codified at 5 U.S.C. 57, Chapter 57; 11 U.S.C. 111; 15 U.S.C. 1601, 1602, 1632, 1637, 1640, 1650, 1661, 1666, 1666b, 1666c, 1681b, 1681j, 1693, 41 and 632; 20 U.S.C. 1001 and 1002; 31 U.S.C. 5316 (May 22, 2009).

[28] *See* 75 FR 36589 (June 28, 2010).

[29] The ''custodial'' exclusion relates to a person engaged in physical transportation, such as an armored car. For a more comprehensive discussion, *see* Section IV.F. of this rule. *See also* Notice at 74 FR 22138.

[30] *See* Food, Conservation, and Energy Act of 2008, Public Law No. 110–246, Sec. 13101, 122 Stat. 1651, 2189–94 (2008) (amending section 2(c)(2) of the CEA, 7 U.S.C. 2(c)(2)).

[31] 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)) (emphasis added).

[32] 31 U.S.C. 5312(a)(2)(R), (T), (W), (Y), (Z); 31 U.S.C 5330(d).

include, for example, an individual who cashed a check as an accommodation for a family member. Despite not moving forward with the change proposed in the Notice, FinCEN remains concerned that the definition might be misunderstood to include such an individual. In response to this concern, the final rule includes a provision that excludes ''a natural person who engages in an activity identified in paragraphs (ff)(1) through (ff)(5) of this section on an infrequent basis and not for gain or profit'' from the MSB definition. By using the phrase ''a natural person'' in the limitation, FinCEN excludes only individuals; not business entities, non-profits, or other legal persons from the MSB definition. By ''infrequent'' activities, FinCEN intends to limit the exclusion to activity that is rare.[33] By ''gain or profit,'' FinCEN intends this exclusion not to be available to persons engaging in these activities for the purpose of monetary gain or other economic benefit, such as an exchange of valuable favors. This exclusion forestalls any interpretation of the definition of MSB to include persons solely providing accommodation services to family members, as in the commenter's hypothetical. Nevertheless, whether a person engages in MSB activities depends on all of the facts and circumstances of each case.

Activity Threshold

Currently, the MSB regulations apply to persons engaged in specified activities that exceed $1,000 for any person in any day (''activity threshold''). The activity threshold applies to all MSB categories [34] except money transmitters, which do not have an activity threshold. FinCEN proposed no changes to the activity thresholds in this rulemaking. However, FinCEN sought comments from the public regarding whether possible adjustments to the activity threshold should be made in a future rulemaking. More than one-third of all comment letters received in response to the Notice expressed an opinion regarding the current activity thresholds. Several commenters supported the proposition that the threshold should be reviewed, but expressed no opinion as to whether it should be increased, decreased, eliminated, or maintained at current levels. One commenter supported the elimination of all thresholds to create uniformity among different types of MSBs, and argued that the thresholds are ineffective insofar as one can operate under those levels without decreasing the risk of money laundering. Another commenter supported raising the thresholds, and argued that the current levels place an undue burden on small businesses. Several commenters supported adjusting the thresholds to take into account disparate thresholds imposed by various state authorities, inflation, or the transaction volume of each individual MSB. Finally, several commenters supported maintaining the current thresholds.

FinCEN also sought specific comments from the public regarding whether transactions involving multiple MSB services should be aggregated together for purposes of determining whether the activity threshold has been met. The comments received on this proposal stressed the logistical complications of compliance with an aggregation requirement on the part of retailers that sell multiple MSB products and act as agents for multiple MSBs. All comments received regarding this proposal were opposed to it.

FinCEN will continue to study these issues and consider the need for a separate rulemaking to adjust the MSB activity thresholds.

Foreign-Located MSBs

FinCEN proposed to amend 31 CFR 1010.100(ff) to provide that foreign-located persons engaging in MSB activities in the United States are subject to the BSA rules. Specifically, FinCEN proposed to revise 31 CFR 1010.100(ff) so that an entity qualifies as an MSB based on its activity within the United States, not the physical presence of one or more of its agents, agencies, branches, or offices in the United States. This proposal arose out of the recognition that the Internet and other technological advances make it increasingly possible for persons to offer MSB services in the United States from foreign locations. FinCEN seeks to ensure that the BSA rules apply to all persons engaging in covered activities within the United States, regardless of each person's physical location. To permit foreign-located persons to engage in MSB activities within the United States and not subject such persons to the BSA would be unfair to MSBs physically located in the United States and would also undermine FinCEN's efforts to protect the U.S. financial system from abuse.

Of the seven comments received on the issue of extending the BSA regulations to cover foreign-located MSBs conducting activities in the United States, five commenters supported it, including two government and three industry commenters. The two commenters opposed were from industry.

Two commenters argued that a foreign-located person's mere maintenance of a bank account in the United States should not cause that person to be defined as an MSB. FinCEN agrees with that position.[35] Under the final rule, a foreign-located person will be subject to the BSA as an MSB to the extent that it does business in one or more of the capacities listed in 1010.100(ff)(1) through 1010.100(ff)(5) wholly or in substantial part within the United States.[36] Whether or not a foreign-located person's MSB activities occur within the United States depends on all of the facts and circumstances of each case, including whether persons in the United States are obtaining MSB services from the foreign-located person, such as sending money to or receiving money from third parties through the foreign-located person.

A commenter also noted that foreign banks, broker dealers, and possibly other financial institutions might be subject to the MSB regulations. FinCEN does not intend to include these institutions in the MSB definition. FinCEN, therefore, has expanded the limitations to the MSB definition to cover foreign banks, as well as other foreign financial agencies that engage in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the Securities and Exchange Commission (''SEC'') or CFTC. These provisions parallel the existing limitations covering domestic banks and entities registered with the SEC or CFTC.

Two commenters expressed general concerns regarding the practicality of

[33] This limitation should be interpreted to mean activities that are not frequent as that term is used in FinCEN's Guidance On Interpreting ''Frequently'' Found In The Criteria For Exempting A ''Non-Listed Business'' Under 31 CFR 103.22(d)(2)(vi)(B), (November 2002), *http://www.fincen.gov/statutes_regs/guidance/html/final_definition_of_frequent.html.*

[34] FinCEN has proposed a modified application of the $1,000 activity threshold with respect to prepaid access, such that providers of prepaid access clearly marked with a value not exceeding $1,000 would not be subject to regulation as an MSB. *See* Definitions and Other Regulations Relating to Prepaid Access, 75 FR 36589 (June 28, 2010).

[35] *See* FinCEN Ruling 2004–1 (Definition of Money Services Business) (Foreign-Located Currency Exchanger With U.S. Bank Account) (A foreign-located currency exchanger whose only presence in the United States was a bank account was not deemed an MSB when the currency exchange transactions occurred solely in a foreign country for foreign-located customers and the use of the U.S. bank account was limited to issuing and clearing dollar-denominated monetary instruments.) (March 29, 2004).

[36] For an expanded discussion of the nature of activities that will subject a foreign-located person to the BSA as an MSB, please refer to the Notice, 74 FR at 22133.

regulating foreign-located MSBs. Both commenters also argued that the proposed change could create a misperception that foreign-located MSBs are too risky for financial institutions to provide them with financial services. Consequently, foreign-located MSBs would find it increasingly difficult to open accounts with banks unwilling to assume such potential risks. Although FinCEN acknowledges that regulating foreign-located MSBs may present challenges, FinCEN believes that there are meaningful benefits to be derived from such regulation.

Under the final rule, foreign-located MSBs will have the same reporting and recordkeeping and other requirements as MSBs with a physical presence in the United States, with respect to their activities in the United States. Foreign-located MSBs will be subject to the same civil and criminal penalties as MSBs with a physical presence in the United States, with respect to their failure to comply with regulatory requirements.[37] Foreign-located MSBs will also be required to designate a person who resides in the United States to function as an agent to accept service of legal process, including with respect to BSA compliance.

Limitations

For clarity, FinCEN proposed to add 31 CFR 1010.100(ff)(8) to create a new section providing limitations to the definition of MSB. FinCEN proposed to move the first two limitations, excluding (1) Banks and (2) persons registered or required to register with, and functionally regulated or examined by, the SEC or the CFTC, from the definition of MSB at 31 CFR 1010.100(ff) for clarity. Also, as noted above, foreign banks and certain foreign financial agencies have been included in the limitations in the final rule to address issues raised by commenters with regard to foreign-located MSBs. The third limitation, as discussed above, clarifies the scope of the definition of MSB, excluding individuals engaging in infrequent activity as an accommodation. There were no comments on moving the first two limitations to a separate section. The addition of the third limitation regarding natural persons and the extension of the first two limitations to include foreign institutions, while not proposed, do not alter any obligations but merely clarify the scope of 31 CFR 1010.100(ff).

B. Changes to the Definition of ''Currency Dealer or Exchanger''

FinCEN proposed several changes to 31 CFR 1010.100(ff)(1) (formerly 31 CFR 103.11(uu)(1)), which defines ''currency dealer or exchanger'' as a category of MSB. Comments regarding proposed changes, while noting a few concerns (discussed below), were largely supportive, and the final rule adopts all of the proposed changes.

The final rule replaces the phrase ''currency dealer or exchanger'' with ''dealer in foreign exchange.'' Removal of the term ''currency'' from the category's name is designed to clarify that persons meet the definition by not only exchanging currency, but also by exchanging other monetary instruments, funds, or other instruments denominated in currency. Although the BSA uses the term ''currency exchange,'' FinCEN interprets this language as having been intended to capture the underlying activity involved in foreign exchange services, which includes the exchange of instruments other than currency. The proposed change is consistent with current industry practice, which commonly involves exchanging instruments other than currency.

The final rule inserts the term ''foreign'' into the category's name to clarify FinCEN's longstanding policy that any exchange that occurs in the United States is covered by the definition, even if the exchange consists of currency, other monetary instruments, funds, or other instruments denominated exclusively in non-U.S. currencies. Therefore, if all other requirements are fulfilled, and a person exchanges currency, other monetary instruments, funds, or other instruments denominated in one non-U.S. currency for those in another non-U.S. currency, the person is a dealer in foreign exchange for BSA purposes. Though such transactions may not involve U.S. dollars, the potential use of a dealer in foreign exchange in this manner to launder money, finance terrorism, or carry out other illicit activity nevertheless would impact the U.S. financial system and should be subject to regulation. Failure to capture exchanges within the United States of two foreign currencies (or of payment instruments denominated in two foreign currencies) would leave a significant and unnecessary gap in the BSA rules. This change also underscores the international nature of money laundering and terrorist financing.

By inserting the phrase ''currency, or other monetary instruments, funds or other instruments'' the final rule clarifies that dealing in foreign exchange is not limited to the physical exchange of the *currency* of one country for the *currency* of another country. This language sets forth the media of exchange that trigger the definition more clearly than in the previous version of the rule. FinCEN's current rules and existing body of administrative rulings establish that a person who converts funds denominated in the currency of one country into funds denominated in the currency of another country is an MSB by virtue of that activity.[38] Additionally, the phrase ''other instruments'' is intended to capture those types of payment instruments that do not fall precisely into one of the other categories, but nevertheless are readily recognizable as payment instruments.

One commenter expressed concern that the inclusion of ''other instruments denominated in currency'' in addition to ''currency'' would cover persons offering foreign exchange transactions that involve stored value or other products in a manner that would implicate a wide range of retailers and other entities not generally understood to be dealers in foreign exchange. FinCEN does not consider this to be the case however, because payment devices such as debit cards, credit cards, and stored value do not involve currency exchanges at a point of sale. The point of sale transaction, from the perspective of the buyer and the seller (including the U.S.-located merchant hypothesized by the commenter), is only denominated in U.S. dollars. Any exchange of currency involved in such a transaction occurs in the back office processing of the financial institution issuing the device. A merchant's acceptance of foreign issued stored value to purchase U.S. issued stored value or U.S. currency, other monetary instruments, funds, or other instruments does not make that merchant a dealer in foreign exchange. On the other hand, there are transactions involving stored value that FinCEN would deem foreign exchange, including scenarios where a merchant either accepts or pays out foreign currency in exchange for stored value. For example, a person is a dealer in foreign exchange if the person:

[37] *See* 31 CFR 1022.380(e) (formerly 31 CFR103.41(e)), 31 CFR 1010.810–1010.820 (formerly 31 CFR 103.56–103.57), and 31 CFR 1010.840 (formerly 31 CFR 103.59).

[38] *See* FinCEN Ruling 2008–R003 (Whether a Person That is Engaged in the Business of Foreign Exchange Risk Management is a Currency Dealer or Exchanger or Money Transmitter) (May 9, 2008); FinCEN Ruling 2008–R002 (Whether a Foreign Exchange Dealer is a Currency Dealer or Exchanger or Money Transmitter) (May 9, 2008); and 31 CFR 1022.410(b)(6) (formerly 31 CFR 103.37(b)(6)).

(1) Accepts foreign currency, or other monetary instruments, funds, or other instruments (other than stored value) denominated in foreign currency, and provides a stored value product in return; or (2) accepts stored value and provides in return foreign currency, or other monetary instruments, funds, or other instruments (other than stored value) denominated in foreign currency.

The final rule includes the phrase ''of one or more other countries'' [39] in the definition, underscoring FinCEN's policy that a person is not a dealer in foreign exchange based on exchanges that involve currency or instruments denominated exclusively in the currency of one country. Assuming all other conditions under the BSA rules are met, a dealer in foreign exchange is a person that converts the currency, other monetary instruments, funds, or other instruments denominated in one currency for the currency, other monetary instruments, funds, or other instruments denominated in a different currency.

FinCEN received one comment in support of this proposal, and two comments in opposition. One commenter argued that when a person accepts instruments denominated in the currency of one country in exchange for currency of the same country, where the currency is not U.S. dollars, the exchange may technically require an intermediate transaction involving U.S. dollars. FinCEN, however, is concerned with the customer transaction and what currency the customer begins with and ends with, not any exchanges or recording that take place in the back office of the merchant. The other commenter opposing the proposal argued that the activity of exchanging bills within the same currency should be covered under the MSB rules because certain criminals convert denominations of cash exclusively within the currency of one country. Both of these comments, however, in essence propose to include activities within the category that are not commonly understood to be ''foreign exchange.'' Therefore, FinCEN believes the proposed change better comports with the common understanding of the foreign exchange business.

The final rule includes the phrase ''for any other person'' to explicitly reflect FinCEN's longstanding position that a person is not a dealer in foreign exchange to the extent the person exchanges their own money on their own behalf.[40]

The final rule includes the phrase ''whether or not for same-day delivery'' to account for the potential time difference between the date on which the exchange rate is agreed and the date of the exchange. Common settlement terms in foreign exchange markets include: (1) Same-day or cash—where the parties both agree to an exchange of currency and conclude the exchange on the same working day; (2) spot—where the parties agree to an exchange of currency on one date, with the exchange taking place two working days thereafter; (3) cash forward—where the parties agree to an exchange of currency on one date, with the exchange of currency deferred until an agreed-upon date in the future; and (4) future—where the parties agree to an exchange of currency on one date, with settlement to occur in an agreed upon delivery period in the future, typically by payment of an amount reflecting the change in the foreign currency rate between the time of the agreement and delivery. A contract for future delivery of currency may also be settled with the delivery of currency, resulting in the exchange of the currencies underlying the futures contract.

One commenter expressed concern that this change will create confusion regarding the $1,000 threshold where the dealer in foreign exchange is instructed to make multiple disbursements of exchanged currency over time. The use of the phrase ''whether or not for same day delivery'' is intended to capture such activity and to make clear that the date of the payment by the customer to the dealer in foreign exchange, not the date of any subsequent disbursements, is the date relevant to the calculation of the $1,000 threshold.

Persons registered with and functionally regulated or examined by the CFTC including retail foreign exchange dealers are excluded from the definition of dealer in foreign exchange. As noted above, FinCEN is consulting with the CFTC regarding retail foreign exchange dealers.[41]

C. Meaning of the Term ''Check Casher''

FinCEN proposed to amend 31 CFR 1010.100(ff)(2) (formerly 31 CFR 103.11(uu)(2)) to clarify the meaning of the term ''check cashing'' by splitting the existing regulatory definition into two paragraphs: one paragraph to define check cashing activity; another paragraph to exclude certain activity from that definition.

In the Notice, FinCEN proposed several changes to the definition of ''check casher'' to more accurately describe which activities are covered by or excluded from the definition. Nine commenters addressed various issues related to the definition of ''check casher.'' Most commenters generally supported the proposed changes. As a result, the final rule adopts most of them without change with one exception, related to stored value, discussed below regarding activities not subject to the ''check casher'' definition.

''In return'' was added to the definition to more accurately describe the activity that occurs when cashing a check or redeeming a monetary instrument. The Uniform Commercial Code references were added to provide a clear definition of ''check.'' A reference to the definition of ''monetary instruments'' was also provided. ''Other instruments'' is intended to capture those types of payment instruments that do not fall precisely into one of the other categories. The term ''other instruments'' is meant to capture those instruments that are readily recognizable as payment instruments without capturing goods or services that may be purchased with a check or monetary instrument.

The definition incorporates the redeeming of monetary instruments into the definition of ''check casher.'' Given its similarity to check cashing, it is unnecessary to treat this activity separately from check cashing.[42] Accordingly, a person engaged in redeeming monetary instruments (including traveler's checks and money orders) is a check casher if it redeems checks for currency or a combination of currency and monetary or other instruments. This revision does not capture activity that is tantamount to merely exchanging one monetary instrument for another monetary or other instrument and accordingly requires currency to be included in the redeeming. All of the commenters that addressed this proposal were

[39] The addition of ''one or more other countries'' is intended to capture the fact that some foreign currencies are used by multiple countries. For instance, the Euro is used by member states of the European Union. Accordingly, a dealer in foreign exchange may accept funds of one or more other *countries* in exchange for funds of one or more other countries.

[40] *See, e.g.,* FinCEN Ruling 2003–9, (Definition of Money Services Business (Money Transmitter/Currency Dealer or Exchanger)) (October 20, 2003). *See also,* FinCEN Ruling 2004–3, (Definition of Money Services Business (Money Transmitter/Currency Dealer or Exchanger)) (Aug. 17, 2004).

[41] 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)).

[42] FinCEN does not interpret ''redeem'' to include taking payment instruments or mechanisms in exchange for goods or services. *See* 1999 Rulemaking, 64 FR at 45441–45443.

supportive. As a result, the final rule adopts this proposal without change.

One commenter requested clarification regarding the cashing of checks or other instruments in exchange for both goods and services and currency. Entities that accept payment for goods or services with a check and return more than $1,000 in currency or a combination of currency and other monetary instruments fall under the definition of ''check casher'' regardless of the value of the goods or services.[43]

The revision also clarifies what activities are *not* subject to the ''check casher'' definition. The definition, as proposed, exempted purchases of closed loop stored value with a check, monetary instrument, or other instrument. One commenter objected to this limitation, expressing concerns that it was too narrow and that sellers of open loop stored value in exchange for checks would be ''check cashers'' for purposes of this rule. As a result, this final rule exempts the purchase of any type of stored value with a check, monetary instrument, or other instrument from being an activity subject to the check casher definition. Stored value related issues generally will be dealt with in a separate rulemaking, as will be discussed subsequently.[44]

The definition also exempts persons who cash checks for the verified maker of a check otherwise buying goods and services. One commenter was in favor of this proposal and one opposed. The commenter opposed to this proposal was concerned that retailers would not be able to verify the maker of a check. FinCEN does not believe that this will be a problem, however, because retailers can verify the identity of the maker of the check in any manner that comports with their internal policies. Retailers can verify the maker of a check by, for example, checking a driver's license or other form of identification at the time of purchase against the name of the maker of the check, already a common practice of some retailers who accept personal checks. The Notice asked for comment on other types of low risk check cashing that should be exempt, such as government or payroll checks. Several commenters agreed that cashing such low risk checks should be exempt, but two commenters disagreed, noting that fraud exists in such low risk checks as well and that such exemptions unnecessarily complicate due diligence. FinCEN may address other types of low risk check cashing in a future rulemaking after further study.

Finally, under the previous regulations, redeemers of traveler's checks and money orders had SAR obligations while check cashers did not. As these two categories of MSB have been combined, we will seek comment in a future rulemaking on whether or not to require check cashers to report suspicious activity to FinCEN under the BSA. Commenters to this rulemaking were largely in favor of a SAR requirement for check cashers, though two commenters disagreed, noting the high number of reports that would be generated and the burden on check cashing businesses. Issuers of traveler's checks and money orders will continue to have SAR reporting requirements with respect to the instruments that they issue.

D. Meaning of the Term ''Issuer or Seller of Traveler's Checks or Money Orders''

This rule combines prior sections 1010.100(ff)(3) (formerly 103.11(uu)(3)), ''issuer of traveler's checks, money orders, or stored value,'' and 1010.100(ff)(4) (formerly 103.11(uu)(4)), ''seller or redeemer of traveler's checks, money orders, or stored value,'' into new section 1010.100(ff)(3), ''issuer or seller of traveler's checks or money orders.'' Issuance and sale of traveler's checks and money orders are similar activities in that they can be covered by a single definition. A new, separate category relating to stored value, renamed ''Issuer, seller, or redeemer of stored value,'' replaces 1010.100(ff)(4) and is discussed subsequently.[45]

In the Notice, FinCEN proposed to clarify the definitions regarding activities related to traveler's checks and money orders by removing redundant language and specifying how to calculate the activity threshold for such activities. Five commenters addressed various issues related to the definition of ''issuer or seller of traveler's checks or money orders.''

The rule eliminates the ''redeemer'' language that is contained in the previous definitions. Although the previous rules included those who ''redeem'' traveler's checks and money orders, traveler's checks typically are redeemed by their issuers, making a separate redemption category redundant in such circumstances. Moreover, redeeming a traveler's check or money order by a non-issuer has been incorporated into the definition of a check casher.[46] All of the commenters who addressed this proposal were supportive. As a result, the final rule adopts this proposal without change.

The rule defines an ''issuer'' by virtue of the amount at which its monetary instruments or traveler's checks are sold, as opposed to the amounts at which they are issued. For example, the amount of the sale includes the face value of the monetary instruments plus any fees. Because money orders are not issued in round dollar increments like traveler's checks, but are rather sold either directly by the issuer or by its agent to a customer who specifies the exact amount, a business must look at this activity to determine whether its transactions exceed the activity threshold per person per day. Similarly, although traveler's checks are usually issued in large round amounts (*e.g.,* $20, $50, or $100), the definition is linked to the aggregate amount at which those checks are sold, either directly by the issuer or at the agent level, to a customer in a single day. All of the commenters who addressed this proposal were supportive, though one commenter argued that issuers and sellers should only be responsible for aggregation based on the amount for which the instrument is sold to the extent that they have actual knowledge that the transactions involve the same person and exceed the threshold. However, changing the requirement from the face value of the instrument to the amount for which the instrument is sold does not change the aggregation requirement. Businesses have the same aggregation requirements as under the prior rule, only the determination of the amount has changed. The final rule adopts this proposal without change.

E. Meaning of the Term ''Stored Value''

Under the prior rules, FinCEN addressed traveler's checks, money orders, and stored value under two separate definitions of providers of those products: (1) Issuers and (2) sellers or redeemers. The Notice proposed to group providers of stored

[43] *See* Guidance—Definition of Check Casher and BSA Requirements (Jan. 2003), *http://www.fincen.gov/statutes_regs/guidance/html/definition_of_check_casher.html.*

[44] See the discussion below under ''Meaning of the Term 'Stored Value''' for a discussion of the relationship of this final rule to the recent Notice of Proposed Rulemaking ''Definitions and Other Regulations Relating to Prepaid Access,'' 75 FR 36589 (June 28, 2010).

[45] See the discussion below under ''Meaning of the Term 'Stored Value''' for a discussion of the relationship of this final rule to the recent Notice of Proposed Rulemaking ''Definitions and Other Regulations Relating to Prepaid Access,'' 75 FR 36589 (June 28, 2010).

[46] FinCEN has never held that a business that provides goods or services in exchange for payment in the form of money orders or traveler's checks is an MSB. *See* 1999 Rulemaking, 64 FR at 45447. Accordingly, only a business that redeems these instruments for currency, or exchanges them for a combination of currency and monetary or other instruments, is considered an MSB, specifically a check casher, under the rule.

value together, separately from issuers or sellers of traveler's checks and money orders. All of the commenters who addressed this proposal were supportive. The final rule adopts this proposal without change.

Several commenters noted that stored value is empirically similar to activity engaged in by persons defined as ''money transmitters,'' but the mechanisms for directing that the money be transmitted are different. Most commenters on this issue recommended treating stored value as a separate category of MSB. FinCEN agrees, and is therefore treating stored value as a distinct MSB activity, keeping it separate from the category established for money transmitters, while at the same time acknowledging that stored value should have more comprehensive anti-money laundering regulation.

In 1999, FinCEN issued a final rulemaking deferring certain requirements for the stored value industry based on the complexity of the industry and the desire to avoid unintended consequences with respect to an industry then in its infancy. In 2009, Congress passed the Credit CARD Act, which required FinCEN to issue regulations relating to stored value. On June 28, 2010, FinCEN issued Notice of Proposed Rule Making, Amendment to the Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Prepaid Access.[47] The proposed changes to stored value are generally not reflected in this rulemaking, but will be addressed in a separate Prepaid Access rule.

F. Meaning of the Term ''Money Transmitter''

This rule revises the regulation interpreting 31 U.S.C. 5312(a)(2)(R), which includes money transmitters within the definition of ''financial institution'' under the BSA. The prior regulation contained a facts and circumstances limitation that excluded from the ''money transmitter'' definition persons that are engaged in the business of money transmission as an integral part of the execution and settlement of the transaction. The ''integral'' exception includes entities that could *not* engage in their businesses without engaging in the transmission of funds. This rule clarifies the language of these limitations.

This rule's definition of ''money transmitter'' is ''a person who provides money transmission services.'' This language is consistent with existing language in the BSA.[48] The definition removes the phrase ''engages as a business'' as FinCEN continues to regulate an MSB by its activity and the context in which the activity occurs and not by its status. The removal of ''engages as a business'' does not broaden the regulation beyond its present scope.[49] The commenters were generally supportive regarding this change, though one commenter argued that because the statute used the phrase ''engages as a business'' the regulation also must use the same phrase. The change to the regulation, however, does not alter the scope or meaning of the rule; the change only clarifies the rule's application. As a result, it is unnecessary to replicate the phrase and the final rule adopts this proposal without change.

The definition also removes the phrase ''whether or not licensed or required to be licensed.'' While this phrase reflects language in 31 U.S.C. 5312, FinCEN finds the phrase to be unnecessary because it does not add substantive value to the meaning of money transmitter.

The regulatory definition of ''money transmission services'' includes the phrase ''or other value that substitutes for currency'' to state that businesses that accept stored value or currency equivalents as a funding source and transmit that value are providing money transmission services. FinCEN has modified the final rule so that both references to ''value'' in the regulation are expressed as ''value that substitutes for currency'' to maintain consistency in the rule's language. The word ''such'' has also been removed from the final rule to eliminate the possibility of any misinterpretation that a person must receive and transmit the exact same currency, funds, or other value to be covered under the definition of ''money transmitter.''

By including the transmission of value, the prior and current regulatory definitions of ''money transmitter'' are worded to include persons engaged in informal value transfer systems, including hawalas.[50] Such activity is money transmission, and the persons engaged in that activity are money transmitters subject to the requirements of the BSA.[51] To further emphasize the rule's applicability to these money transmitters, FinCEN has modified the final rule to include a specific reference to informal value transfer systems as a means of money transmission.

The regulatory definition of ''money transmission services'' also adds the phrase ''to another location or person.'' Although this phrase is not in the statutory definition of money transmitting service, it is implicit in the statutory definition's use of the word ''transmitting.'' Transactions involving the acceptance of currency from one person at one location and the return of that currency to that same person at the same location would not be considered a money transmission service. The addition of the phrase ''to another location or person,'' explicitly conveys this interpretation.

One commenter suggested that the phrase ''the acceptance of currency * * * from one person AND the transmission * * * to another location or person,'' indicated that acceptance by the money transmitter of funds had to precede any transmission to satisfy the definition. If this were the case, however, it would be easy—particularly in an electronic environment—to circumvent this definition by the simple expedient of transmitting funds a fraction of a second before accepting them. The activity of money transmitting, for the purposes of FinCEN regulations, involves both acceptance and transmission, but not necessarily in that order. FinCEN is concerned about the ability to circumvent regulation if it were to require that the acceptance of currency must always precede transmission. The final rule adopts the phrase without change.

The phrase ''any means'' is defined in the prior rule to include transmission ''through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; or an electronic funds transfer network.'' The final rule moves the phrase ''any means'' to a different part of the definition only to increase reader comprehension, and the change in placement of the phrase has no substantive effect on the meaning of the definition. The definition of ''any

[47] *See* 75 FR 36589.

[48] 31 U.S.C. 5330 uses the language ''any business that provides * * * money transmitting or remittance services.''

[49] FinCEN notes that ''money services business'' is defined as ''[a] person wherever located *doing business*. * * *'' (emphasis added). 31 CFR 1010.100(ff).

[50] ''An 'informal value transfer system' refers to any system, mechanism, or network of people that receives money for the purpose of making the funds or an equivalent value payable to a third party in another geographic location, whether or not in the same form.'' FinCEN Advisory Issue 33 (Informal Value Transfer Systems) (March 2003). ''Hawala'' is one name for a type of informal value transfer system that operates outside of, or parallel to, ''traditional'' banking or financial channels. *See generally* FinCEN Advisory FIN–2010–A011 (Informal Value Transfer Systems) (September 2010).

[51] *Id.*

means'' in the final rule also includes a specific reference to informal value transfer systems. One commenter suggested adding the phrase ''but is not limited to'' following '''Any means' includes.'' While FinCEN believes that this clarification is not technically necessary, as ''any means,'' by its own meaning, encompasses more than the listed examples in the regulation, we will adopt the change to avoid possible confusion.

The prior regulations also include in the definition, ''(B) Any other person engaged as a business in the transfer of funds.'' [52] This phrase was removed from the definition in the Notice. The final rule, however, includes this phrase to minimize any possible confusion regarding whether there has been a change to the scope of the definition of ''money transmitter.'' The scope of the definition of ''money transmitter'' in this final rule is the same as that of the prior regulatory definition.

As mentioned above, the prior regulation contained limitations regarding the definition of a ''money transmitter.'' [53] The Notice also contained additional limitations that incorporate existing interpretations of the prior limitation by adding explicit language reflecting policy developed through administrative ruling letters and guidance. The limitation language reads, ''whether a person is a money transmitter as described in this section is a matter of facts and circumstances. The term 'money transmitter' shall not include a person that only * * *'' engages in the following activity:

''(A) Provides the delivery, communication, or network access services used by a money transmitter to support money transmission services. * * *'' Institutions that are used by money transmitters solely for the purpose of providing a medium of communication or transportation of information between money services businesses and their agents, financial institutions, or service providers are not deemed ''money transmitters.'' No commenters addressed this issue, and the final rule adopts this proposal without change.

''(B) Acts as a payment processor to facilitate the purchase or payment of a bill for a good or service through a clearance and settlement system by agreement with the creditor or seller. * * *'' Although payment processors may provide a money transmission service, the service is ancillary to their primary business of coordinating payments either from a debtor to a creditor or, if operating at the point of sale, from a purchaser to a merchant.[54] A payment processor could not provide the primary service of coordination without providing ancillary money transmission services, but because the money transmission services are ancillary, and because they are generally low risk, it is appropriate for entities engaged in this activity to be excluded from the definition. Note, however, that this limitation only applies to transmission services by payment processors on behalf of the creditor or seller and not the debtor or buyer. A contractual agreement for transmission services between the creditor or seller and the money transmitter is a relatively controlled flow of money that poses little money laundering risk, provided that the funds are transmitted only to the creditor or seller with whom the payment processor has contracted and not to another location or person. The final rule adopts this proposal with only a change of punctuation needed for clarity.

''(C) Operates a clearance and settlement system or otherwise acts as an intermediary solely between BSA regulated institutions. This includes but would not be limited to the Fedwire system, electronic funds transfer networks, certain registered clearing agencies regulated by the SEC, and derivatives clearing organizations, or other clearinghouse arrangements established by a financial agency or institution. * * *'' Persons who solely provide a clearance and settlement system or act as intermediaries between BSA regulated institutions and do not provide other types of money transmission services are mere instrumentalities that the financial institutions use to process their transfers. Therefore, these instrumentalities, such as the credit card networks, are not included in the definition of ''money transmitter.'' The final rule adopts this proposal without change.

''(D) Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person engaged in such business from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial papers, or other value at any point during the transportation.''

This limitation encompasses past armored car rulings. The final rule slightly modifies the proposed language to make this connection explicit, by including a specific reference to armored cars, and by limiting the applicability of the limitation to persons that, like the armored car companies that requested rulings from FinCEN, were primarily engaged in providing armored car services. FinCEN previously ruled that although armored car services may fall within the definition of a ''money transmitter,'' to the extent that they transport currency on behalf of BSA regulated institutions, they should not be treated as money transmitters.[55] FinCEN additionally determined that an armored car is not a money transmitter when it moves currency on behalf of a private party to an account or another location of the same party without taking a financial stake in the transaction.[56]

To take advantage of this limitation, the person engaged in physical transportation cannot have more than a custodial interest in what is being moved at any point during the transportation.[57] The exclusion does not apply to such a person if it deposits currency or monetary instruments that it is transporting into its own operating account at a bank, regardless of the identity of the ultimate recipient of the funds represented by the currency or monetary instruments.

One commenter suggested adding ''a bailment'' as an example of ''no more than a custodial interest.'' FinCEN does not believe that it is necessary to add this example in the text of the regulation, but does agree that such a status may not confer more than a custodial interest. Another commenter suggested clarifying ''custodial interest'' by adding the phrase ''without beneficial ownership.'' While the addition of ''without beneficial ownership'' might clarify some cases, FinCEN believes that it could lead to confusion given its meaning and use in other money laundering contexts. Our intent with ''custodial interest'' is to convey that such an entity has no economic stake (beyond payment for its

[52] 31 CFR 1010.100(ff)(5)(i)(b) (formerly 31 CFR 103.11(uu)(5)(i)(b)).

[53] 31 CFR 1010.100(ff)(5)(ii) (formerly 31 CFR 103.11(uu)(5)(ii)).

[54] FinCEN Ruling 2003–R008 (Definition of Money Transmitter) (Nov. 19, 2003).

[55] FinCEN Ruling 2004–R003 (Definition of Money Services Business) (Aug. 17, 2004). *See also* FinCEN 2003–R007 (Definition of Money Transmitter) (Oct. 28, 2003).

[56] *Id.* In such instance, the armored car is merely a conduit or vehicle and has no control over the financial transaction.

[57] Our rulings referred to the lack of a ''stake in the transaction'' in establishing the standard for the armored car exclusion; we have clarified our wording to ''no more than a custodial interest'' to qualify for the exclusion.

transportation services) in any transaction involving currency, value that substitutes for currency, or other monetary instruments being transported. Based on that interpretation of the phrase, FinCEN adopts the proposed language.

This exclusion applies to transport initiated by any person other than certain BSA-regulated institutions. Specifically, when transport is initiated by a bank, a broker-dealer or other SEC-regulated financial institution, or a futures commission merchant or other CFTC-regulated institution, a transport business such as an armored car is not a money transmitter, regardless of whether the transport is to another location or person.

Except as indicated above, the final rule adopts this proposal without change.

''(E) Provides stored value.'' A person who provides stored value is also excluded from the definition of ''money transmitter,'' whether the stored value is open or closed loop. Furthermore, by ''provides'' FinCEN intends that both entities involved in the sale and management of stored value programs be excluded. For example, a department store that offers gift cards that only may be used at that department store, a convenience store that sells network branded cards that may be used anywhere like a credit card, or a program manager who organizes a stored value program and facilitates loading the stored value device are not subject to the MSB rules as money transmitters.

FinCEN previously determined that a person solely issuing, selling, or redeeming closed loop stored value is not an ''issuer, seller or redeemer of stored value'' and was therefore not subject to BSA regulation as an MSB under that MSB category.[58] This limited exclusion, however, did not imply that all persons who provided open loop stored value were money transmitters. In part, this is because a significant amount of the open loop stored value issued within the United States is issued by or through a depository institution, a category of financial institution that expressly is excluded from the definition of MSB by statute and regulation.[59] The Notice proposed only excluding ''providers of closed loop stored value'' from the definition. In light of the Prepaid Access NPRM, which addresses stored value issues as a separate category of MSB, FinCEN is excluding stored value in any form from being considered a form of money transmission.

Many of the commenters to the Notice regarding stored value were in favor of treating open and closed loop stored value differently under the regulations. While FinCEN agrees that the two forms of stored value have different risks and vulnerabilities, we believe it is appropriate to exclude both forms from the definition of ''money transmission.'' These issues are further addressed by the Prepaid Access NPRM. Additionally, one commenter noted that the distinctions between open and closed loop stored value are being removed as some closed loop systems can now be international, involve multiple retailers, and be reloadable. The commenter argued that the distinction should be based on whether the stored value product has cash access or not. FinCEN agrees that cash access is one aspect of a stored value product that is significant in assessing the product's risk, along with reloadability, the breadth of retailer acceptance of the product, and whether the product can be used internationally. These issues were addressed in the Prepaid Access NPRM.[60] The final rule adopts the above described expanded limitation to the definition of ''money transmitter.''

''(F) Accepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.''

Similar to circumstance (B), persons that sell goods or provide services other than money transmission services, and only transmit funds as an integral part of that sale of goods or provision of services, are not money transmitters. For example, brokering the sale of securities, commodity contracts, or similar instruments is not money transmission notwithstanding the fact that the person brokering the sale may move funds back and forth between the buyer and seller to effect the transaction. Similarly, this limitation would apply to a debt management company that made payments to creditors as the conduit for a negotiated schedule of payments from the debtor to its creditors.[61] The person who is accepting and transmitting the funds is offering a service other than money transmission services which could not be provided without transmitting funds. No commenters addressed this issue and the final rule adopts this proposal without change.

G. Registration and Service of Legal Process

There currently is no provision within 31 CFR Chapter X that requires foreign-located MSBs to designate an agent to accept service of legal process in the United States. To enhance the ability of U.S. law enforcement and regulatory agencies to reach these MSB registrants, FinCEN proposed to add the following language to 31 CFR 1022.380 (formerly 31 CFR 103.41): ''(a)(2) Foreign-located Money Services Business. Each foreign-located person engaged in activities in the United States as a money services business shall designate the name and address of a person who resides in the United States and is authorized, and has agreed, to be an agent to accept service of legal process with respect to compliance with this part and shall identify the address of the location within the United States for records pertaining to paragraph (b)(1)(iii) of this section.'' FinCEN received three supportive comments on this issue. Accordingly, FinCEN adopts the proposal without change, except insofar as the language was changed slightly to reflect the corresponding language in the definition of MSB, which was changed from the Notice, discussed above.

Compliance with the designation of an agent for service of process provision, however, will require a change to FinCEN Form 107, Registration of Money Services Business. The current form does not contain a field in which such an agent can be designated. FinCEN will soon publish a new proposed form for notice and comment which makes a number of conforming changes to reflect this final rule, including adding a checkbox to indicate whether an MSB is foreign located and allowing for designation of an agent for service of process. Accordingly, this rule provides that compliance with 31 CFR 1022.380 is not required until six months after the date of publication of this final rule in the **Federal Register**, by which time the revised FinCEN Form 107, Registration of Money Services Business, will be final and available.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), FinCEN certifies that these regulation revisions will not have a significant economic impact on a substantial number of small entities. Because most MSBs are small

[58] *See* FinCEN Ruling 2003–R004 (Definition of Money Transmitter/Stored Value (Gift Certificates/Gift Cards)) (Aug. 15, 2003) (FinCEN does not currently interpret the definition of stored value to include closed system products such as a mall-wide gift card program).

[59] *See* 31 U.S.C. 5330(d)(1)(C); 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)).

[60] *See* 75 FR 36589, 36599.

[61] *See* FinCEN Ruling 2004–R004 (Definition of Money Services Business) (Nov. 24, 2004).

entities, this rule will affect a substantial number of small entities. Although a substantial number of small entities are affected, the economic impact of this rulemaking is not significant. This rulemaking imposes no new recordkeeping or reporting requirements on MSBs, with the possible exception of foreign-located MSBs. In fact, some commenters noted that this rule will have a modest reduction in reporting burden.

In large part, the rule updates the MSB definitions to integrate past guidance and rulings into the regulatory text. Incorporating existing interpretations into the regulatory text would have no impact on small entities that have been aware of these interpretations for years. Even if an MSB was unfamiliar with the existing guidance and rulings, these regulatory changes will not impose a significant economic impact. First, this final rule is limited to revising the MSB definitions to make clearer what activities subject a person to the BSA rules pertaining to MSBs. This change provides additional certainty without adding additional burden. Second, as previously stated, the rule clarifies that certain foreign-located MSBs with a U.S. presence, such as having U.S. customers or recipients, are subject to the BSA rules. Finally, the rule makes minimal nomenclature changes with respect to certain MSB categories to help clarify distinctions.

In addition, the rulemaking combines all of stored value into one category, without substantively changing the existing definition. This structural change will not affect small entities. Accordingly, a regulatory flexibility analysis is not required.

VI. Paperwork Reduction Act Notices

The collection of information contained in this final rule has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control numbers 1506–0004, 1506–0013, 1506–0015, 1506–0020, 1506–0052. Based on comments received, the clarification of the definitions in 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)) will likely reduce the reporting burden for most MSBs. Certain foreign-located MSBs conducting business in the United States may see an increase in their obligation to collect and report information. However, any such potential must be weighed against the reduction in burden to be achieved by clarifying the exceptions we have made explicit regarding the type of business activity that would make a business an MSB. With the exception of foreign-located MSBs, this rulemaking does not impose any new reporting or recordkeeping requirements. Instead, it merely clarifies the current scope of the existing MSB definitions and related rules. To the extent that we have eliminated any uncertainty or ambiguities with this rule and to the extent that we have narrowed the scope of businesses subject to reporting or recordkeeping requirements, we have not in the aggregate expanded, and may in fact have in the aggregate reduced, regulatory obligations.[62]

Description of Affected Financial Institutions: Money Services Businesses as defined in 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)).

Estimated Number of Affected Financial Institutions: 42,000.

Estimated Average Annual Burden Hours per Affected Financial Institution: The estimated average decrease in burden associated with the recordkeeping requirements in this final rule is one hour per affected financial institution.

Estimated Total Annual Burden: Minus 42,000 hours from OMB control number 1506–0052.

In the Notice, FinCEN invited comment on: Whether the proposed collection of information was necessary for the proper performance of FinCEN's mission; the accuracy of the estimated burden associated with the proposed collection of information; how the quality, utility, and clarity of the information to be collected may be enhanced; and how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.[63] Commenters did not address these issues specifically. However, commenters stated that clarifying the definitions will reduce the reporting burden on MSBs.

Under the Paperwork Reduction Act, an agency may not conduct or sponsor a collection of information, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number.

[62] This amendment to 31 CFR 1010.100 (formerly 31 CFR 103.11) and 31 CFR 1022.380 (formerly 31 CFR 103.41) makes explicit that certain foreign-located persons that conduct MSB operations in the United States must register with FinCEN as an MSB and will be subject to certain BSA recordkeeping and reporting requirements.

[63] Amendment to Bank Secrecy Act Regulations; Definitions and Other Regulations Relating to Money Services Businesses, 74 FR 22129 (May 12, 2009).

VII. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this rulemaking provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 31 CFR Parts 1010, 1021 and 1022

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, FinCEN is amending 31 CFR Parts 1010, 1021 and 1022 as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title

III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

■ 2. Section 1010.100 is amended by:
■ a. Revising paragraph (ff) introductory text;
■ b. Revising paragraph (ff)(1);
■ c. Revising paragraph (ff)(2);
■ d. Revising paragraph (ff)(3);
■ e. Revising paragraph (ff)(4);
■ f. Revising paragraph (ff)(5);
■ g. Adding and reserving paragraph (ff)(7); and
■ h. Adding paragraph (ff)(8) as follows.

§ 1010.100 General definitions.

* * * * *

(ff) *Money services business.* A person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(6) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States.

(1) *Dealer in foreign exchange.* A person that accepts the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more countries in exchange for the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more other countries in an amount greater than $1,000 for any other person on any day in one or more transactions, whether or not for same-day delivery.

(2) *Check casher*—(i) In general. A person that accepts checks (as defined in the Uniform Commercial Code), or monetary instruments (as defined at § 1010.100(dd)(1)(ii), (iii), (iv), and (v)) in return for currency or a combination of currency and other monetary instruments or other instruments, in an amount greater than $1,000 for any person on any day in one or more transactions.

(ii) *Facts and circumstances; Limitations.* Whether a person is a check casher as described in this section is a matter of facts and circumstances. The term ''check casher'' shall not include:

(A) A person that sells stored value in exchange for a check (as defined in the Uniform Commercial Code), monetary instrument or other instrument;

(B) A person that solely accepts monetary instruments as payment for goods or services other than check cashing services;

(C) A person that engages in check cashing for the verified maker of the check who is a customer otherwise buying goods and services;

(D) A person that redeems its own checks; or

(E) A person that only holds a customer's check as collateral for repayment by the customer of a loan.

(3) *Issuer or seller of traveler's checks or money orders.* A person that

(i) Issues traveler's checks or money orders that are sold in an amount greater than $1,000 to any person on any day in one or more transactions; or

(ii) Sells traveler's checks or money orders in an amount greater than $1,000 to any person on any day in one or more transactions.

(4) *Issuer, seller, or redeemer of stored value.* A person that

(i) Issues stored value (other than a person that does not issue such stored value in an amount greater than $1,000 to any person on any day in one or more transactions); or

(ii) Sells or redeems stored value (other than a person that does not sell or redeem stored value for an amount greater than $1,000 from any person on any day in one or more transactions).

(5) *Money transmitter*—(i) *In general.*

(A) A person that provides money transmission services. The term ''money transmission services'' means the acceptance of currency, funds, or other value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. ''Any means'' includes, but is not limited to, through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; an electronic funds transfer network; or an informal value transfer system; or

(B) Any other person engaged in the transfer of funds.

(ii) *Facts and circumstances; Limitations.* Whether a person is a money transmitter as described in this section is a matter of facts and circumstances. The term ''money transmitter'' shall not include a person that only:

(A) Provides the delivery, communication, or network access services used by a money transmitter to support money transmission services;

(B) Acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller;

(C) Operates a clearance and settlement system or otherwise acts as an intermediary solely between BSA regulated institutions. This includes but is not limited to the Fedwire system, electronic funds transfer networks, certain registered clearing agencies regulated by the Securities and Exchange Commission (''SEC''), and derivatives clearing organizations, or other clearinghouse arrangements established by a financial agency or institution;

(D) Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person primarily engaged in such business, such as an armored car, from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial paper, or other value at any point during the transportation;

(E) Provides stored value; or

(F) Accepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.

* * * * *

(7) [Reserved].

(8) *Limitation.* For the purposes of this section, the term ''money services business'' shall not include:

(i) A bank or foreign bank;

(ii) A person registered with, and functionally regulated or examined by, the SEC or the CFTC, or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the SEC or CFTC; or

(iii) A natural person who engages in an activity identified in paragraphs (ff)(1) through (ff)(5) of this section on an infrequent basis and not for gain or profit.

■ 3. Section 1010.605 is amended by:
■ a. Revising paragraph (f)(1)(iv) introductory text;
■ b. Revising paragraph (f)(1)(iv)(A); and
■ c. Revising paragraph (f)(2), to read as follows.

§ 1010.605 Definitions.

* * * * *

(f) * * *

(1) * * *

(iv) Any person organized under foreign law (other than a branch or office of such person in the United States) that is engaged in the business of, and is readily identifiable as:

(A) A dealer in foreign exchange; or

* * * * *

(2) For purposes of paragraph (f)(1)(iv) of this section, a person is not ''engaged

in the business'' of a dealer in foreign exchange or a money transmitter if such transactions are merely incidental to the person's business.

* * * * *

PART 1021—RULES FOR CASINOS AND CARD CLUBS

■ 4. The authority citation for part 1021 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Public 107–56, 115 Stat. 307.

■ 5. Section 1021.311 is amended by revising paragraph (c)(1) to read as follows:

§ 1021.311 Filing obligations.

* * * * *

(c) * * *

(1) Transactions between a casino and a dealer in foreign exchange, or between a casino and a check casher, as those terms are defined in § 1010.100(ff) of this Chapter, so long as such transactions are conducted pursuant to a contractual or other arrangement with a casino covering the financial services in paragraphs (a)(8), (b)(7), and (b)(8) of this section;

* * * * *

PART 1022—RULES FOR MONEY SERVICES BUSINESSES

■ 6. The authority citation for part 1022 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Public Law 107–56, 115 Stat. 307.

■ 7. Section 1022.210 is amended by revising the first sentence of paragraph (d)(1)(iii) to read as follows:

§ 1022.210 Anti-money laundering programs for money services businesses.

* * * * *

(d) * * *

(1) * * *

(iii) A person that is a money services business solely because it is an agent for another money services business as set forth in § 1022.380(a)(3), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). * * *

* * * * *

■ 8. Section 1022.380 is amended by:

■ a. Revising the first sentence of paragraph (a)(1);

■ b. Redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), respectively;

■ c. Adding a new paragraph (a)(2); and

■ d. Revising paragraph (b)(3), to read as follows.

§ 1022.380 Registration of money services businesses.

(a) *Registration requirement*—(1) *In general.* Except as provided in paragraph (a)(3) of this section, relating to agents, each money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, maintain a list of agents as required by 31 U.S.C. 5330 and this section. * * *

(2) *Foreign-located Money Services Business.* Each foreign-located person doing business, whether or not on a regular basis or as an organized or licensed business concern, in the United States as a money services business shall designate the name and address of a person who resides in the United States and is authorized, and has agreed, to be an agent to accept service of legal process with respect to compliance with this chapter, and shall identify the address of the location within the United States for records pertaining to paragraph (b)(1)(iii) of this section.

* * * * *

(b) * * *

(3) *Due date.* The registration form for the initial registration period must be filed on or before the end of the 180-day period beginning on the day following the date the business is established. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

* * * * *

■ 9. Section 1022.410 is amended by:

■ a. Revising the heading of the section;

■ b. Revising paragraph (a)(1) introductory text;

■ c. Revising paragraph (a)(2);

■ d. Revising paragraph (b) introductory text; and

■ e. Revising paragraph (b)(9), to read as follows.

§ 1022.410 Additional records to be made and retained by dealers in foreign exchange.

(a)(1) After July 7, 1987, each dealer in foreign exchange shall secure and maintain a record of the taxpayer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such account is opened or credit line extended. Where a person is a non-resident alien, the dealer in foreign exchange shall also record the person's passport number or a description of some other government document used to verify his identity. Where the account or credit line is in the names of two or more persons, the dealer in foreign exchange shall secure the taxpayer identification number of a person having a financial interest in the account or credit line. In the event that a dealer in foreign exchange has been unable to secure the identification required within the 30-day period specified, it shall nevertheless not be deemed to be in violation of this section if:

* * * * *

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account or credit line has applied for a taxpayer identification or social security number on Form SS–4 or SS–5, until such time as the person maintaining the account or credit line has had a reasonable opportunity to secure such number and furnish it to the dealer in foreign exchange.

* * * * *

(b) Each dealer in foreign exchange shall retain either the original or a microfilm or other copy or reproduction of each of the following:

* * * * *

(9) A system of books and records that will enable the dealer in foreign exchange to prepare an accurate balance sheet and income statement.

* * * * *

Dated: July 14, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2011–18309 Filed 7–20–11; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0630]

Drawbridge Operation Regulation; Lower Grand River, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation in 33 CFR 117.478(b) governing the operation of the LA 77 bridge across the

Lower Grand River, mile 47.0 (Alternate Route) at Grosse Tete, Iberville Parish, Louisiana. This deviation allows the Louisiana Department of Transportation and Development to maintain the bridge in the closed-to-navigation position from 7 a.m. until 5 p.m. on Wednesday, July 20, 2011. At all others times, the bridge will operate normally for the passage of vessels. This temporary deviation was issued to allow for the repairs to the main girder of the bridge.

DATES: This deviation is effective from 7 a.m. through 5 p.m. on Wednesday July 20, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0630 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0252 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David Frank, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, e-mail *David.M.Frank@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The LA 77 bridge across the Lower Grand River, mile 47.0 (Alternate Route) at Grosse Tete, Iberville Parish, Louisiana, has a vertical clearance of 2 feet above high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists mainly of tows with barges and some recreational craft. Coastal Bridge Company, on behalf of the Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the bridge in order to effect repairs to the bridge.

This deviation allows the draw of the LA 77 swing drawbridge across the Lower Grand River, mile 47.0 (Alternate Route), at Grosse Tete, Iberville Parish, Louisiana, to remain in the closed-to-navigation position from 7 a.m. until 5 p.m. on Wednesday, July 20, 2011. Presently, the draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, shall open on signal; except that, from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8 a.m. and from 2:30 p.m. to 4:30 p.m., Monday through Friday except Federal holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

The closure is necessary in order to install angles on the main girder and weld a crack on the bridge. The contractor has indicated that they may be able to operate the bridge during the closure and may be able to move their equipment out of the channel but the movement of the equipment may require several hours to complete immediate work and move equipment. This maintenance is essential for the continued operation of the bridge. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

No alternate routes are available for the passage of vessels; however, the closure was coordinated with waterway interests who have indicated that they will be able to adjust their operations around the proposed work schedule.

Due to prior experience and coordination with waterway users, it has been determined that this closure will not have a significant effect on vessels that use the waterway.

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: June 28, 2011.

David M. Frank,

Bridge Administrator.

[FR Doc. 2011–18223 Filed 7–20–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2011–0451; FRL–9440–9]

Approval and Promulgation of Air Quality Plans: State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving an April 20, 2011, request from the State of Missouri to exempt sources of Nitrogen Oxides (NO_X) in the Missouri portion of the St. Louis (MO–IL) metropolitan 8-hour ozone nonattainment area from the Clean Air Act (CAA) requirements for NO_X Reasonably Available Control Technology (RACT) for purposes of attaining the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Missouri NO_X RACT waiver request for its portion of the St. Louis metropolitan 8-hour ozone nonattainment area is based on the most recent three years of complete, quality-assured ozone monitoring data, which demonstrate that additional reductions of NO_X emissions in the Area would not contribute to attainment of the 1997 8-hour ozone NAAQS.

DATES: This direct final rule will be effective September 19, 2011 without further notice unless EPA receives adverse comments by August 22, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments identified by Docket ID No. EPA–R07–OAR–2011–0451, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail: kemp.lachala@epa.gov*.

3. *Mail or Hand Delivery or Courier:* Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2011–0451. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*. or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101 at 913–551–7214, or by e-mail at *kemp.lachala@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following questions:

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I. What action is EPA taking?
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V. EPA's Action
VI. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is approving an April 20, 2011, request from the State of Missouri to exempt sources of NO_X in the Missouri portion of the St. Louis (MO-IL) metropolitan 8-hour ozone nonattainment area from the CAA requirements for NO_X RACT for purposes of attaining the 1997 8-hour ozone NAAQS.[1] The St. Louis (MO-IL) metropolitan 8-hour ozone nonattainment (hereafter referred to as the ''St. Louis Area'' or ''Area'') includes the counties of Franklin, Jefferson, St. Charles, and St. Louis as well as St. Louis City in Missouri; and the counties of Madison, Monroe, St. Clair, and Jersey in Illinois. The State's NO_X RACT waiver request is based on the most recent three years of complete, quality-assured ozone monitoring data, which demonstrate that additional reduction of NO_X emissions in the Missouri portion of the St. Louis ozone nonattainment area would not contribute to attainment of the 1997 8-hour ozone NAAQS in this ozone nonattainment areas. *See* 76 FR 33647 (June 9, 2011) for more information about this monitoring data.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no relevant adverse comments. EPA notes that the technical basis for this rule was its previous final determination on June 9, 2011 (76 FR 33647) that the St. Louis (MO-IL) metropolitan 1997 8-hour ozone nonattainment area has attained the 1997 8-hour ozone NAAQS. EPA received no comments during that particular rulemaking. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on September 19, 2011 without further notice unless EPA receives adverse comments by August 22, 2011. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. State Petition

On April 20, 2011, Missouri Department of Natural Resources (MDNR) submitted a request for a NO_X RACT waiver for the St. Louis metropolitan ozone nonattainment area. This NO_X RACT waiver was requested for the 1997 8-hour ozone NAAQS. MDNR based its NO_X RACT waiver request on quality-assured ozone air quality data for 2008–2010, which demonstrate that the 1997 8-hour ozone NAAQS has been attained in the St. Louis (MO-IL) metropolitan area without the implementation of additional NO_X RACT controls in the Missouri portion of the area.

III. EPA Review of the Petition

A. Has this ozone nonattainment area attained the 1997 8-hour ozone NAAQS?

An area may be considered in attainment with the 1997 8-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and appendix I, based on the most recent three years of complete, quality-assured air quality monitoring data. To attain this standard, the average of the annual fourth-highest daily maximum 8-hour average ozone concentrations are measured and recorded at each monitoring site over the most recent 3-year period (the monitoring site's ozone design value) must not exceed the ozone standard. Based on an ozone data rounding convention described in 40 CFR part 50, appendix I, the 1997 8-hour ozone standard is attained if the area's ozone design value is 0.084 parts per million (ppm) or less. The data must be collected and quality-assured in accordance with 40 CFR part 58, and must be recorded in EPA's Air Quality System. The monitoring network collecting the data must meet the applicable requirements of 40 CFR part 58. The data supporting attainment of the standard must meet the minimum data completeness requirements in 40 CFR part 50, appendix I.

The monitors and design values are displayed in Table 1. The table summarizes the annual fourth-highest daily maximum 8-hour ozone concentrations and their 3-year (2008–2010) averages for all monitors in the St. Louis (MO-IL) metropolitan area. These data reflect peak ozone concentrations quality assured and reported by the States of Illinois and Missouri.

[1] EPA previously approved Missouri's NO_X RACT rules submitted to meet its obligations under the 1-hour ozone standard. *See,* 65 FR 31482, May 18, 2000. Today's action does not affect these State Implementation Plan (SIP)-approved rules, which remain in effect. This action relates only to Missouri's obligations with respect to NO_X RACT related to the 1997 8-hour ozone standard.

TABLE 1—ANNUAL FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGES IN PPM FOR THE ST. LOUIS (MO-IL) AREA

State	County	Monitor	2008 4th high (ppm)	2009 4th high (ppm)	2010 4th high (ppm)	2008–2010 average (ppm)
Illinois	Jersey	Jerseyville, 17–083–1001	0.069	0.068	0.072	0.069
	Madison	Alton, 17–119–0008	0.068	0.067	0.080	0.071
		Maryville, 17–119–1009	0.070	0.074	0.074	0.072
		Wood River, 17–119–3007	0.067	0.066	0.070	0.067
	St. Clair	East St. Louis, 17–163–0010	0.064	0.069	0.072	0.068
Missouri	Jefferson	Arnold West, 29–099–00019	0.70	0.070	0.077	0.072
	St. Charles	Orchard Farm, 29–183–1004	0.072	0.073	0.077	0.074
		West Alton, 29–183–1002	0.076	0.071	0.084	0.077
	St. Louis	Maryland Heights, 29–189–0014	0.069	0.070	0.076	0.071
		Pacific, 29–189–0005	0.064	0.064	0.069	0.065
	St. Louis City	Blair Street, 29–510–0085	0.073	0.065	0.071	0.069

Review of the 2008–2010 ozone concentrations and site-specific ozone design values (3-year averages) shows that all of the monitoring sites were attaining the 1997 8-hour ozone NAAQS during this period. Therefore, based on the most recent three years of complete, quality assured ozone monitoring data, the 1997 8-hour ozone standard has been attained in the area. Review of preliminary data from the 2011 ozone season indicates that the area continues to attain the 8-hour ozone NAAQS. *See* 76 FR 33647.[2]

B. EPA's Analysis of Missouri's NO_X RACT Waiver Petition

EPA's guidance document, ''Guidance on Limiting Nitrogen Oxides (NO_X) Requirements Related to 8-Hour Ozone Implementation,'' sets forth the criteria for demonstrating that further NO_X emission reductions in an ozone nonattainment area will not contribute to ozone NAAQS attainment.[3] The guidance provides that three consecutive years of monitoring data documenting ozone levels attaining the ozone NAAQS in areas in which a state has not implemented certain NO_X emission controls is adequate to demonstrate that the additional NO_X emission reductions will not aid in achieving attainment of the ozone NAAQS. As described in the guidance document, approval of the NO_X emission control exemption is granted by EPA on a contingent basis. The NO_X emission control exemption continues only as long as the state's monitoring data continues to demonstrate attainment of the ozone NAAQS.[4] If, prior to redesignation of the area to attainment of the ozone NAAQS, the area violates the 1997 8-hour ozone NAAQS, as defined at 40 CFR 50.10 and appendix I, EPA will undertake rulemaking to withdraw the NO_X emission control exemption, and the area would once again be subject to the NO_X emission control requirements under section 182(f) of the CAA.[5]

EPA's review of the ozone monitoring data and Missouri's NO_X emission control exemption request shows that Missouri has complied with the requirements for a NO_X RACT exemption in the State's 8-hour ozone nonattainment area under section 182(f) of the CAA consistent with the guidelines contained in EPA's January 14, 2005, guidance document. Therefore, EPA has determined that the State of Missouri qualifies for exemption from the NO_X RACT requirements for the Missouri portion of the St. Louis (MO-IL) metropolitan ozone nonattainment area for the purposes of attaining the 1997 8-hour ozone NAAQS.

IV. What is the effect of this action?

The section 182(f) NO_X RACT exemption is based on a finding by EPA that additional reductions of NO_X would not contribute to attainment of the 1997 8-hour ozone NAAQS in the St. Louis (MO-IL) metropolitan nonattainment area. The Area has three consecutive years of ozone levels attaining the ozone standard, and preliminary 2011 ozone data show that the 1997 8-hour ozone standard continues to be attained in the area.

While EPA is waiving the requirements to control NO_X emissions through additional NO_X RACT controls in the Missouri portion of the St. Louis nonattaiment area, EPA recognizes that there are other benefits to controlling NO_X emissions. These benefits include reducing acid deposition, reducing nitrogen deposition in sensitive wetlands, estuaries, and their watersheds, and mitigating ozone transport to downwind ozone nonattainment areas. Missouri will continue to be required to control NO_X emissions from certain NO_X sources under other CAA programs, such as the Acid Rain program in title IV of the CAA, for purposes of achieving these environmental benefits. This NO_X RACT waiver will not affect other existing and pending NO_X emission control requirements for Missouri that are needed to achieve these environmental benefits. In addition, as noted above, this action does not affect the NO_X RACT controls in the St. Louis area previously approved by EPA relating to the 1-hour ozone standard.

In addition, EPA notes that an approval of this waiver request is solely for purposes of the CAA requirements to meet the 1997 8-hour ozone NAAQS. The waiver would not apply for purposes of the ozone NAAQS promulgated in 2008 (March 27, 2008, 73 FR 16435) or for purposes of any future ozone NAAQS EPA may promulgate. To the extent that section 182(f) may apply to the St. Louis area for purposes of the 2008 or any future ozone NAAQS, the State would need to submit a NO_X RACT SIP or would need to demonstrate that a waiver is appropriate for purposes of that different ozone NAAQS.

V. EPA's Action

EPA is approving Missouri's request to exempt the Missouri portion of the St. Louis 8-hour ozone nonattainment area

[2] In today's action, EPA is not reopening its final determination of attainment described in the June 9, 2011 final rule, but is merely explaining the technical basis for our conclusion that a NO_X emission control exemption is appropriate for the area based on the area's attainment of the ozone NAAQS.

[3] Steven D. Page, Director, Office of Air Quality Planning and Standards, ''Guidance on Limiting Nitrogen Oxides (NO_X) Requirements Related to 8-Hour Ozone Implementation,'' Memorandum to EPA Air Directors, Regions I–X, January 14, 2005 (found at: *http://www.epa.gov/ttn/oarpg/t1/memoranda/guide8hr-oz.pdf*).

[4] *Id.* at 21.

[5] *Id.* at 21–22.

from the section 182(f) NO_X RACT requirement. This approval is based on EPA's review of the data showing that the requirements of section 182(f)(1)(A), as elaborated upon in EPA's guidance for section 182(f) exemptions, have been met for the St. Louis (MO–IL) metropolitan ozone nonattainment area. If EPA subsequently determines through notice-and-comment rulemaking that the Area has violated the 1997 8-hour ozone standard, the basis for this exemption would no longer exist, and the area would thereafter have to address the pertinent requirements.

VI. Statutory and Executive Order Reviews

In reviewing a request from the State to exempt sources of NO_X in the Missouri portion of the St. Louis (MO–IL) metropolitan 8-hour ozone nonattainment area from the CAA requirements for NO_X RACT for purposes of attaining the 1997 8-hour ozone NAAQS, EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this action does not impose additional requirements beyond those imposed by state law. Therefore, 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 exemption 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 in 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 March 16, 2009. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 12, 2011.

Karl Brooks,

Regional Administrator, Region 7.

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 AA—Missouri

■ 2. Section 52.1342 is revised to read as follows:

§ 52.1342 Control strategy: Ozone.

(a) *Determination of attainment.* EPA has determined, as of June 9, 2011, that the St. Louis (MO-IL) metropolitan 1997 8-hour ozone nonattainment area has attained the 1997 8-hour ozone NAAQS. This determination, in accordance with 40 CFR 51.918, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standards for as long as the area continues to meet the 1997 Ozone NAAQS.

(b) *Approval.* EPA is approving an April 20, 2011, request from the State of Missouri for a waiver from the Clean Air Act requirement for Oxides of Nitrogen (NO_X) Reasonably Available Control Technology (RACT) in the Missouri portion of the St. Louis (MO-IL) metropolitan 8-hour ozone nonattainment area for purposes of attaining the 1997 8-hour ozone National Ambient Air Quality Standard.

[FR Doc. 2011–18176 Filed 7–20–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1203]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a

newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended].

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Washington.	City of Fayetteville (10–06–1619P).	December 1, 2010; December 7, 2010; *The Northwest Arkansas Times.*	The Honorable Lioneld Jordan, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, AR 72701.	April 6, 2011	050216
New Mexico:					
Bernalillo	Unincorporated areas of Bernalillo County (10–06–1669P).	May 5, 2011; May 12, 2011; *The Albuquerque Journal.*	The Honorable Maggie Hart Stebbins, Chair, Bernalillo County Board of Commissioners, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	March 23, 2011	350001
Roosevelt	City of Portales (11–06–1696P).	May 6, 2011; May 13, 2011; *The Portales News-Tribune.*	The Honorable Sharon King, Mayor, City of Portales, 100 West 1st Street, Portales, NM 88130.	April 29, 2011	350054
Roosevelt	Unincorporated areas of Roosevelt County (11–06–1696P).	May 6, 2011; May 13, 2011; *The Portales News-Tribune.*	Ms. Charlene Hardin, Roosevelt County Manager, 109 West 1st Street, 4th Floor, Portales, NM 88130.	April 29, 2011	350053
Sandoval	City of Rio Rancho (10–06–2588P).	January 26, 2011; February 2, 2011; *The Rio Rancho Observer.*	The Honorable Thomas E. Swisstack, Mayor, City of Rio Racho, 3200 Civic Center Circle Northeast, Rio Rancho, NM 87144.	June 2, 2011	350146
Oklahoma: Oklahoma.	City of Oklahoma City (11–06–0387P).	May 3, 2011; May 10, 2011; *The Journal Record.*	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	September 7, 2011	405378
Texas:					
Brazos	City of College Station (10–06–1996P).	November 24, 2010; December 1, 2010; *The Eagle.*	The Honorable Nancy Berry, Mayor, City of College Station, 1101 Texas Avenue, College Station, TX 77840.	March 30, 2011	480083
Comal	City of New Braunfels (10–06–0915P).	December 29, 2010; January 5, 2011; *The New Braunfels Herald-Zeitung.*	The Honorable R. Bruce Boyer, Mayor, City of New Braunfels, 424 South Castell Avenue, New Braunfels, TX 78130.	December 21, 2010	485493

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Fort Bend	Unincorporated areas of Fort Bend County (11–06–1803P).	April 13, 2011; April 20, 2011; *The Fort Bend Independent.*	The Honorable Robert Hebert, Fort Bend County Judge, 301 Jackson Street, Richmond, TX 77469.	March 30, 2011	480228
Tarrant	City of Fort Worth (11–06–1741P).	April 5, 2011; April 12, 2011; *The Commercial Recorder.*	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	March 29, 2011	480596
Wichita	City of Wichita Falls (10–06–2494P).	January 25, 2011; February 1, 2011; *The Times Record News.*	The Honorable Glenn Barham, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, TX 76307.	June 1, 2011	480662

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 8, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–18348 Filed 7–20–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Ventura (FEMA Docket No.: B–1177).	Unincorporated areas of Ventura County (10–09–3055P).	December 24, 2010; December 31, 2010; *The Ventura County Star*.	The Honorable Kathy Long, Chair, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, CA 93009.	May 2, 2011	060413
Colorado:					
Douglas (FEMA Docket No.: B–1186).	Town of Parker (10–08–0769P).	December 23, 2010; December 30, 2010; *The Douglas County News-Press*.	The Honorable David Casiano, Mayor, Town of Parker, 20120 East Main Street, Parker, CO 80138.	April 29, 2011	080310
Douglas (FEMA Docket No.: B–1186).	Unincorporated areas of Douglas County (10–08–0769P).	December 23, 2010; December 30, 2010; *The Douglas County News-Press*.	The Honorable Steven A. Boand, Chairman, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	April 29, 2011	080049
Florida:					
Monroe (FEMA Docket No.: B–1191).	City of Key West (11–04–2484X).	February 9, 2011; February 16 2011; *The Key West Citizen*.	The Honorable Craig Cates, Mayor, City of Key West, 525 Angela Street, Key West, FL 33040.	January 31, 2011	120168
Monroe (FEMA Docket No.: B–1191).	Unincorporated areas of Monroe County (11–04–2484X).	February 9, 2011; February 16 2011; *The Key West Citizen*.	The Honorable Heather Carruthers, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	January 31, 2011	125129
Georgia: Douglas (FEMA Docket No.: B–1177).	Unincorporated areas of Douglas County (10–04–4871P).	December 24, 2010; December 31, 2010; *The Douglas County Sentinel*.	Mr. Tom Worthan, Chairman, Douglas County Board of Commissioners, 8700 Hospital Drive, Douglasville, GA 30134.	May 2, 2011	130306
Hawaii: Hawaii (FEMA Docket No.: B–1191).	Unincorporated areas of Hawaii County (10–09–3793P).	January 3, 2011; January 10, 2011; *The Hawaii Tribune-Herald*.	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Street, Hilo, HI 96720.	May 10, 2011	155166
North Carolina:					
Alamance (FEMA Docket No.: B–1186).	Unincorporated areas of Alamance County (10–04–2172P).	December 16, 2010; December 23, 2010; *The Times-News*.	Mr. Craig F. Honeycutt, Alamance County Manager, 124 West Elm Street, Graham, NC 27253.	April 22, 2011	370001
Macon (FEMA Docket No.: B–1177).	Town of Franklin (10–04–8305P).	December 15, 2010; December 22, 2010; *The Franklin Press*.	The Honorable Joe Collins Mayor, Town of Franklin, P.O. Box 1479, Franklin, NC 28734.	December 8, 2010	375350
Wake (FEMA Docket No.: B–1186).	City of Raleigh (10–04–1146P).	January 6, 2011; January 13, 2011; *The News & Observer*.	The Honorable Charles Meeker Mayor, City of Raleigh, P.O. Box 590, Raleigh, NC 27602.	May 13, 2011	370243
Tennessee: Sumner (FEMA Docket No.: B–1186).	City of Gallatin (10–04–4673P).	January 19, 2011; January 26, 2011; *The Gallatin Newspaper*.	The Honorable Jo Ann Graves Mayor, City of Gallatin, 132 West Main Street, Gallatin, TN 37066.	May 26, 2011	470185
Utah: Washington (FEMA Docket No.: B–1191).	City of St. George (11–08–0105P).	February 11, 2011; Feburary 18, 2011; *The Spectrum*.	The Honorable Daniel D. McArthur, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	February 4, 2011	490177

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 30, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–18349 Filed 7–20–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 195

[Docket No. PHMSA–2008–0186; Amdt. No. 195–96]

RIN 2137–AE36

Pipeline Safety: Applying Safety Regulations to All Rural Onshore Hazardous Liquid Low-Stress Lines, Correction

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Final rule; correction.

SUMMARY: PHMSA is correcting a final rule that appeared in the **Federal Register** on May 5, 2011 (76 FR 25576). That final rule amended the Federal Pipeline Safety Regulations to address rural low-stress hazardous liquid pipelines that were not covered previously by safety regulations. This document corrects an error in the final rule regarding the compliance date for identifying all segments of a Category 3 low-stress pipeline.

DATES: This correction takes effect on October 1, 2011.

FOR FURTHER INFORMATION CONTACT: For technical information contact Mike Israni by phone at 202–366–4571 or by e-mail at *Mike.Israni@dot.gov.* For all other information contact Tewabe Asebe by phone at 202–366–4595 or by e-mail at *Tewabe.Asebe@dot.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–10778, published in the **Federal Register** of May 5, 2011, PHMSA published a final rule titled ''Pipeline Safety: Applying Safety Regulations to All Rural Onshore Hazardous Liquid Low-Stress Lines.'' This final rule published with an error on page 25587 which incorrectly identified July 1, 2011, as the compliance deadline for identification of Category 3 low-stress lines. This correction changes that date to July 1, 2012.

In FR Doc. 2011–10778 appearing on page 25576 in the **Federal Register** of Thursday, May 23, 2011, the following correction is made:

§ 195.12 [Corrected]

■ 1. On page 25587, in the third column, in paragraph (c)(3)(i), ''July 1, 2011'' is corrected to read ''July 1, 2012''.

Issued in Washington, DC, on July 14, 2011.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2011–18322 Filed 7–20–11; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 76, No. 140
Thursday, July 21, 2011

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–11–0004]

RIN 0563–AC29

Common Crop Insurance Regulations; Onion Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Onion Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2013 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business September 19, 2011 and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–11–0004, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submission. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by e-mail at *rmaweb.content@rma.usda.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received for any 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 the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice.*

FOR FURTHER INFORMATION CONTACT: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC 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.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small

entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 or 7 CFR part 400, subpart J for the informal administrative review process of good farming practices as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.135, Onion Crop Insurance Provisions, to be effective for the 2013 and succeeding crop years. Several requests have been made for changes to improve the insurance coverage offered, address program integrity issues, simplify program administration, and improve clarity of the policy provisions.

The proposed changes are as follows:

1. FCIC proposes to remove all section titles of the Basic Provisions. This information is currently contained in parenthesis following references to section numbers of the Basic Provisions throughout the Crop Provisions.

2. Section 1—FCIC proposes to revise the definitions of ''direct seeded'' and ''transplanted'' by adding the phrase ''onions planted by'' to the beginning of both definitions. This revision will further clarify that these terms are a planting method.

FCIC proposes to revise the definition of ''non-storage onions'' by removing the term generally in both places it is used, since this term is vague and ambiguous. The characteristics listed are those considered for non-storage onions.

FCIC proposes to revise the definition of ''onion production'' by removing the language regarding recoverable size and condition, since these terms are vague and ambiguous.

FCIC proposes to add the definitions of ''processor'' and ''processor contract'' because the terms are used in the definition of ''storage onions.''

FCIC proposes to revise paragraph (a) of the definition of ''production guarantee (per acre)'' by changing the first stage production guarantee for direct seeded and transplanted storage and non-storage onions from thirty-five percent to forty-five percent of the final stage production guarantee. The Special Provisions already establish a higher first stage production guarantee for most onion producing areas. Also, a contracted onion crop insurance evaluation found that a first stage loss incurs more production costs than a prevented planting loss and, therefore, should have a higher production guarantee compared to prevented planting. This change will coincide with the lowering of the prevented planting guarantee in section 15 from forty-five percent to thirty-five percent of the final stage guarantee. FCIC also proposes to revise paragraph (b) by adding ''60%'' in parenthesis following the written phrase ''60 percent'' for consistency.

FCIC proposes to add the definition ''sets'' to specify they are onion bulbs that are planted by hand or by machine.

FCIC proposes to revise the definition of ''storage onions'' by removing the terms generally and normally, since these terms are vague and ambiguous. The characteristics listed are those considered for storage onions. The definition is also being revised to include varieties grown for a processor under the requirements of a processor contract.

FCIC proposes to revise the definition of ''topping'' by replacing the term ''bent over'' with the term ''broken.''

FCIC proposes to remove the definition of ''type'' as onion types will be designated in the Special Provisions.

3. Section 2—FCIC proposes to revise section 2 by removing the language indicating section 2 is to be used in place of the provisions regarding establishing optional units in section 34 of the Basic Provisions. The provisions in section 2 of the Onion Crop Provisions are to be used in addition to the provisions in section 34 of the Basic Provisions.

4. Section 3—FCIC proposes to revise section 3(b)(2) to add language consistent with section 3(b)(1) designating the end of the second stage production guarantee. The first stage ends at the emergence of the fourth leaf for direct seeded or 30 days after planting for transplanted, and the second stage ends when the onions are eligible for the final stage. This makes the second stage consistent with the first and final stage production guarantees.

FCIC proposes to revise section 3(b)(3) by deleting duplicative language that provides the calculation for ''production guarantee (per acre)'' that is already contained in paragraph (c) of the definition in section 1.

FCIC proposes to revise section 3(c) to clarify that the production guarantee, for indemnity purposes, will be based on the stage in which damage occurred for any acreage of onions damaged in the first or second stage when a majority of producers in the area would not normally continue to care for the crop, even if the producer elects to continue such care. FCIC also proposes to delete the phrase ''deemed to be destroyed'' to clarify that if the producer continues to care for the damaged onion acreage, then any later appraised unharvested production or harvested production will be used as production to count.

5. Section 4—FCIC proposes to revise this section to list the contract change dates because it has added coverage to more states, which have different contract change dates based on the cancellation and termination dates. FCIC also proposes to add language that other contract change dates may be designated in the Special Provisions.

6. Section 5—FCIC proposes to add language to the introductory text to allow other or changes to the cancellation and termination dates if designated in the Special Provisions.

FCIC proposes to add Arizona to the states with a cancellation and termination date of August 31.

FCIC proposes to add the cancellation date of September 30 and termination date of November 30 for Hawaii.

FCIC proposes to add the cancellation and termination date of November 30 for all California counties except Lassen, Modoc, Shasta and Siskiyou.

7. Section 6—FCIC proposes to add a new section 6 to require the producer to provide a copy of all processor contracts by the acreage reporting date, if the Special Provisions specify a processor contract is required to insure processing onions. This is consistent with other Crop Provisions in regards to processing crops.

8. Redesignated section 8—FCIC proposes to revise the introductory text in redesignated section 8 to include shallots on the list of onions that are excluded as an insured crop, since shallots are not insurable under these Crop Provisions.

9. Redesignated section 10—FCIC proposes to revise redesignated section 10(b) by adding language that the provisions in 10(b) are to be used in accordance with the provisions in section 11 of the Basic Provisions.

FCIC proposes to revise redesignated section 10(b)(1) by redesignating section 10(b)(1)(i) as 10(b)(1)(ii) and adding a new section 10(b)(1)(i) for the end of insurance date of May 20 for 1015 Super Sweets, and any other non-storage onions in Cameron, Hidalgo, Starr, and Willacy Counties, Texas; adding a new section 10(b)(1)(iii) to specify the end of insurance date in Arizona is June 30 for all storage and non-storage onions; adding a new section 10(b)(1)(iv) to specify the end of insurance date is July 15 for 1015 Super Sweets, and other non-storage onions for all Texas counties except Cameron, Hidalgo, Starr, and Willacy; revising new section 10(b)(1)(v) by adding the phrase ''fall planted'' and deleting the phrase ''and any other non-storage onions'' to specify the end of insurance date is July 31 for fall planted Walla Walla Sweets, in the states of Oregon and Washington; adding a new subsection 10(b)(1)(vi) to specify the end of insurance date is August 31 for all non-storage onions not otherwise specified; and adding a new section 10(b)(1)(vii) to specify the end of insurance date is October 15 for all storage onions not otherwise specified. This change will make the end of insurance period more consistent with the actual growing season for a specified area.

FCIC proposes to revise redesignated 10(b)(2)(i) by removing the phrase ''removal of the onions from the field'' because the language regarding removal is used in the definition of ''harvest'' and harvest is already a basis for the end of the insurance period in section 11(b) of the Basic Provisions.

10. Redesignated section 13—FCIC proposes to revise redesignated section 13(a) to clarify any required representative samples of the unharvested crop cannot be topped, lifted or dug. Since onions placed in bags and boxes but not yet removed from the field are considered unharvested, the added language clarifies the representative sample must be comprised of a crop area undisturbed by the pre-harvest processes of topping and lifting or digging.

11. Redesignated section 14—FCIC proposes to add an example for settlement of claim immediately following section 14(b)(7).

FCIC proposes to revise redesignated section 14(c)(iv) to clarify that appraised production for acreage that does not qualify for the final stage guarantee is reduced by the difference between the first or second stage production guarantee (as applicable) and the final stage production guarantee to determine the total production to count for production lost on any acreage prior to the final stage. FCIC also proposes to add an example regarding the calculation for total production to count in a production stage loss immediately following section 14(c)(1)(iv).

12. Redesignated section 15—FCIC proposes to revise redesignated section 15 to decrease the prevented planting coverage from 45 percent to 35 percent of the final stage production guarantee. Prevented planting coverage was reduced to reflect the lower input costs compared to the first stage production guarantee, which has input costs for planting. This change will coincide with increasing the first stage production guarantee for direct seeded storage and non-storage onions from 35 percent to 45 percent of the final stage guarantee in the definition of ''production guarantee (per acre)'' in section 1.

List of Subjects in 7 CFR Part 457

Crop insurance, Onion, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2013 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 457.135 as follows:

a. Revise the introductory text;

b. Add definitions in section 1 for ''Processor'', ''Processor contract'', and ''Sets''; amend the definition of ''Non-storage onions'' by removing the phrase ''generally'' everywhere it appears; and revise the definitions of ''Direct seeded'', ''Onion production'', ''Production guarantee (per acre)'', ''Storage onions'', ''Topping'', ''Transplanted''; and remove the definition of ''Type'';

c. Remove the first section 2 heading and revise section 2;

d. Amend section 3(a) by removing the phrase ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)'';

e. Revise sections 3(b)(2)(i) and 3(b)(2)(ii);

f. Revise section 3(b)(3);

g. Revise section 3(c);

h. Revise section 4;

i. Revise section 5;

j. Redesignate sections 6 through 14 as sections 7 through 15, respectively, and add a new section 6;

k. Amend newly redesignated section 7 by removing the phrase ''(Annual Premium)'';

l. Revise newly redesignated section 8 introductory text;

m. Amend newly redesignated section 9 introductory text by removing the phrase ''(Insurable Acreage)'';

n. Amend newly redesignated section 10(a) by removing the phrase ''(Insurance Period)'';

o. Revise newly redesignated section 10(b);

p. Amend newly redesignated sections 11(a) and 11(b) by removing the phrase ''(Causes of Loss)'';

q. Amend newly redesignated section 12(a) by removing the phrase ''(Replanting Payment)'';

r. Revise newly redesignated section 13(a);

s. Amend newly redesignated section 14 by removing the phrase ''section 13'' and adding the phrase ''section 14'' in its place everywhere it appears;

t. Add an example after newly designated section 14(b)(7);

u. Amend newly redesignated section 14(c)(1)(i)(B) by removing the phrase ''section 12'' and adding the phrase ''section 13'' in its place;

v. Revise newly redesignated section 14(c)(1)(iv);

w. Add an example after newly redesignated section 14(c)(1)(iv); and

x. Revise newly redesignated section 15.

The revised and added text reads as follows:

§ 457.135 Onion crop insurance provisions.

The onion crop insurance provisions for the 2013 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Direct seeded. Onions planted by placing onion seed by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

* * * * *

Onion production. Onions with excess dirt and foliage material removed and that are not considered damaged onion production.

* * * * *

Processor. Any business enterprise regularly engaged in buying and processing onions, that possesses all licenses and permits for processing onions required by the State in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted onions within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow onions of the types designated in the Special Provisions and to deliver the onion production to the processor;

(b) The processor's commitment to purchase all the production from a specified number of acres or the specified quantity of onion production stated in the processor contract; and

(c) The price that will be paid for the production.

Production guarantee (per acre).

(a) First stage production guarantee—Forty-five percent (45%) of the final stage production guarantee for direct seeded and transplanted storage and non-storage onions, unless otherwise specified in the Special Provisions.

(b) Second stage production guarantee—Seventy percent (70%) of the final stage production guarantee for direct seeded storage onions and 60 percent (60%) of the final stage production guarantee for transplanted storage onions and all non-storage onions, unless otherwise specified in the Special Provisions.

(c) Final stage production guarantee—The quantity of onions (in hundredweight) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Sets. Onion bulbs that are planted by hand or by machine.

Storage onions. Onions other than a Bermuda, Granex, or Grano variety, or hybrids developed from these varieties that are harvested as a bulb and dried to a lower moisture content, are firmer, have more outer layers of paper-like skin, and are darker in color than non-storage onions. They are more pungent, have a lower sugar content, and can be stored for several months under proper conditions prior to use without deterioration. Includes varieties grown for a processor under the requirements of a processor contract.

Topping. A pre-harvest process to initiate curing, in which onion foliage is removed or broken.

Transplanted. Onions planted by placing of the onion plant or bulb, by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

2. Unit Division.

In addition to the requirements of section 34 of the Basic Provisions, optional units may be established by type, if separate types are designated in the Special Provisions.

3. * * *

(b) * * *

(2) * * *

(i) For direct seeded storage and non-storage onions, from the emergence of the fourth leaf until eligible for the final stage; and

(ii) For transplanted storage and non-storage onions, from the 31st day after transplanting of onion plants or sets until eligible for the final stage.

(3) Final stage extends from the completion of topping and lifting or digging on the acreage until the end of the insurance period.

(c) The indemnity payable for any acreage of onions will be based on the stage the plants had achieved when damage occurred. Any acreage of onions damaged in the first or second stage, to the extent that the majority of producers in the area would not normally further care for the onions, will have a production guarantee, for indemnity purposes, based on the stage in which the damage occurred, even if you continue to care for the damaged onions.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is:

(a) June 30 preceding the cancellation date for counties with an August 31, September 30, or November 30 cancellation date;

(b) November 30 preceding the cancellation date for counties with a February 1 cancellation date; or

(c) As designated in the Special Provisions.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are as follows, unless otherwise designated in the Special Provisions:

State & county	Cancellation date	Termination date
Arizona; Georgia; Kinney, Uvalde, Medina, Bexar, Wilson, Karnes, Bee, and San Patricio Counties, Texas, and all Texas Counties lying south thereof.	August 31	August 31.
Umatilla County, Oregon; and Walla Walla County, Washington	August 31	September 30.
Hawaii	September 30	November 30.
All California Counties, except Lassen, Modoc, Shasta and Siskiyou	November 30	November 30.
All other states and counties	February 1	February 1.

6. Report of Acreage.

In addition to the provisions of section 6 of the Basic Provisions, if the Special Provisions require a processor contract to insure your onions, you must provide a copy of all your processor contracts to us on or before the acreage reporting date.

* * * * *

8. * * *

In accordance with section 8 of the Basic Provisions, the crop insured will be all the storage and non-storage onions (excluding green (bunch) or seed onions, chives, garlic, leeks, shallots, and scallions) in the county for which a premium rate is provided by the actuarial documents:

* * * * *

10. * * *

(b) In accordance with the provisions of section 11 of the Basic Provisions,

unless otherwise designated in the Special Provisions, the insurance period ends at the earliest of:

(1) The calendar date for the end of the insurance period as follows:

(i) May 20 for 1015 Super Sweets, and any other non-storage onions in Cameron, Hidalgo, Starr, and Willacy Counties, Texas;

(ii) June 1 for Vidalia, and any other non-storage onions planted in the state of Georgia;

(iii) June 30 for all storage and non-storage onions in Arizona;

(iv) July 15 for 1015 Super Sweets, and any other non-storage onions for all Texas counties except Cameron, Hidalgo, Starr, and Willacy;

(v) July 31 for fall planted Walla Walla Sweets, in the states of Oregon and Washington;

(vi) August 31 for all non-storage onions not otherwise specified; and

(vii) October 15 for all storage onions not otherwise specified; or

(2) In addition to the requirements of section 11(b) of the Basic Provision, fourteen days after lifting or digging.

* * * * *

13. * * *

(a) In accordance with the requirements of section 14 of the Basic Provisions, any representative samples of the unharvested crop that may be required cannot be topped, lifted, or dug and must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

* * * * *

14. * * *

(b) * * *

(7) * * *

For Example:

You have a 100 percent share in 100 acres of a unit of transplanted storage onions with a production guarantee of 200 hundredweight per acre, and you select 100 percent of the price election of $8.00 per hundredweight. You suffer a covered cause of loss on 25 acres during the second stage which has a second stage production guarantee of 60 percent of the final stage production guarantee which equals 120 hundredweight per acre. The appraised production on the 25 acres was 2,500 hundredweight of onion production. Your harvested onion production on the remaining 75 acres is 16,000 hundredweight total production to count. Your indemnity will be calculated as follows:

(1) 25 acres × 120 hundredweight (200 × .60) second stage production guarantee = 3,000 hundredweight, and

75 acres × 200 hundredweight final stage production guarantee = 15,000 hundredweight;

(2) 3,000 hundredweight second stage production guarantee × $8.00 price election = $24,000 value of second stage production guarantee, and

15,000 hundredweight final stage production guarantee × $8.00 price election = $120,000 value of final stage production guarantee;

(3) $24,000 value of second stage production + $120,000 value of final stage production guarantee = $144,000 total value of production guarantee;

(4) 500 hundredweight second stage total production to count (from section 14(c)(1)(iv) example) × $8.00 price election = $4,000 value of second stage total production to count, and

16,000 hundredweight final stage total production to count × 8.00 price election = $128,000 value of final stage production to count;

(5) $4,000 value of second stage total production to count + $128,000 value of final stage total production to count = $132,000 total value of production to count;

(6) $144,000 total value of production guarantee − $132,000 total value of production to count = $12,000 value of loss; and

(7) $12,000 × 100 percent share = $12,000 indemnity payment.

* * * * *

(c) * * *

(1) * * *

(iv) For acreage that does not qualify for the final stage production guarantee, and is not subject to section 14 (c)(1)(i) and (ii), the appraised production is reduced by the difference between the first or second stage (as applicable) and the final stage production guarantee; and

For Example:

You have 100 acres of a unit of transplanted storage onions with a production guarantee of 200 hundredweight per acre. You suffer a covered cause of loss on 25 acres during the second stage which has a second stage production guarantee of 60 percent of the final stage production guarantee. The appraised production on the 25 acres was 2,500 hundredweight of onion production. Your second stage total production to count on the 25 acres will be calculated as follows:

25 acres × 200 hundredweight final stage production guarantee = 5,000 hundredweight final stage production guarantee,

5,000 hundredweight final stage production guarantee × 60 percent second stage production guarantee = 3,000 hundredweight second stage production guarantee,

5,000 hundredweight final stage production guarantee − 3,000 hundredweight second stage production guarantee = 2,000 hundredweight difference between second stage and final stage production guarantee, and

2,500 hundredweight appraised − 2,000 hundredweight difference = 500 hundredweight second stage total production to count (for section 14(b) example).

* * * * *

15. Prevented Planting.

Your prevented planting coverage will be 35 percent of your final stage production guarantee for timely planted acreage. Additional prevented planting coverage levels are not available for onions.

Signed in Washington, DC, on July 12, 2011.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2011–18053 Filed 7–20–11; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0431; Airspace Docket No. 11–AGL–11]

Proposed Amendment of Class E Airspace; Spearfish, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Spearfish, SD. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Black Hills Airport-Clyde Ice Field. The geographic coordinates of the airport also would be updated. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before September 6, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0431/Airspace Docket No. 11–AGL–11, at the beginning of your comments. You

may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0431/Airspace Docket No. 11–AGL–11.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd, Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Black Hills Airport-Clyde Ice Field, Spearfish, SD. Controlled airspace is needed for the safety and management of IFR operations at the airport. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 would amend controlled airspace at Black Hills Airport-Clyde Ice Field, Spearfish, SD.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 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 FAA 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 of the earth.

* * * * *

AGL SD E5 Spearfish, SD [Amended]

Black Hills Airport—Clyde Ice Field, SD
(Lat. 44°28′52″ N., long. 103°47′09″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Black Hills Airport—Clyde Ice Field, and within 2.1 miles each side of the 305° bearing from the airport extending from the 7-mile radius to 8.3 miles northwest of the airport, and within 2 miles each side of the 135° bearing from the airport extending from the 7-mile radius to 18.3 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 44°29′50″ N, long. 103°56′17″ W; to lat. 44°13′37″ N, long. 104°14′00″ W; to lat. 44°18′41″ N, long. 104°23′24″ W; to lat. 44°44′11″ N, long. 103°57′49″ W; to lat. 44°50′13″ N, long. 103°28′11″ W; to lat. 44°47′27″ N, long. 102°57′40″ W; to lat. 44°39′31″ N, long. 102°56′34″ W; to lat. 44°38′27″ N, long. 103°12′26″ W; to lat. 44°25′51″ N, long. 103°37′45″ W; thence clockwise via the 7-mile radius of the airport to the point of beginning.

Issued in Fort Worth, TX, on July 13, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–18476 Filed 7–20–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0430; Airspace Docket No. 11–AGL–10]

Proposed Amendment of Class E Airspace; Sturgis, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Sturgis, SD. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Sturgis Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before September 6, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0430/Airspace Docket No. 11–AGL–10, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0430/Airspace Docket No. 11–AGL–10.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Sturgis Municipal Airport, Sturgis, SD. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 would amend controlled airspace at Sturgis Municipal Airport, Sturgis, SD.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 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 FAA 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 of the earth.

* * * * *

AGL SD E5 Sturgis, SD [Amended]

Sturgis Municipal Airport, SD
(Lat. 44°25′05″ N., long. 103°22′32″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Sturgis Municipal Airport, and within 1.7 miles each side of the 302° bearing from the airport extending from the 7-mile radius to 9 miles northwest of the airport.

Issued in Fort Worth, TX, on July 13, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–18370 Filed 7–20–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0605; Airspace Docket No. 11–AGL–13]

Proposed Amendment of Class E Airspace; Valley City, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Valley City, ND. Decommissioning of the Valley City non-directional beacon (NDB) at Barnes County Municipal Airport, Valley City, ND, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before September 6, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0605/Airspace Docket No. 11–AGL–13, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0605/Airspace Docket No. 11–AGL–13.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Barnes County Municipal Airport, Valley City, ND. Airspace reconfiguration is necessary due to the decommissioning of the Valley City NDB and cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport. Geographic coordinates would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 would modify controlled

airspace at Barnes County Municipal Airport, Valley City, ND.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 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 FAA 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 of the earth.

* * * * *

AGL ND E5 Valley City, ND [Amended]

Valley City, Barnes County Municipal Airport, ND
(Lat. 46°56′28″ N., long. 98°01′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Barnes County Municipal Airport, and that airspace extending upward from 1,200 feet above the surface within a 7.9-mile radius of the airport, and within 4 miles southwest and 8.3 miles northeast of the 133° bearing from the airport extending from the 7.9-mile radius to 21.8 miles southeast of the airport.

Issued in Fort Worth, TX, on July 12, 2011.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–18452 Filed 7–20–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0606; Airspace Docket No. 11–AGL–14]

Proposed Amendment of Class E Airspace; Bryan, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Bryan, OH. Decommissioning of the Bryan non-directional beacon (NDB) at Williams County Airport, Bryan, OH, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Williams County Airport.

DATES: 0901 UTC. Comments must be received on or before September 6, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0606/Airspace Docket No. 11–AGL–14, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0606/Airspace Docket No. 11–AGL–14.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Williams County Airport, Bryan, OH. Airspace reconfiguration is necessary due to the decommissioning of the Bryan NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February

26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 would modify controlled airspace at Williams County Airport Airport, Bryan, OH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 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 FAA 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 of the earth.

* * * * *

AGL OH E5 Bryan, OH [Amended]

Bryan, Williams County Airport, OH
(Lat. 41°28′02″ N., long. 84°30′24″ W.)
Bryan, Community Hospital of Williams County Heliport, OH
Point in Space Coordinates
(Lat. 41°27′47″ N., long. 84°33′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Williams County Airport, and within a 6-mile radius of the Point in Space serving Community Hospital of Williams County Heliport.

Issued in Fort Worth, TX, on July 13, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–18458 Filed 7–20–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0429; Airspace Docket No. 11–AGL–9]

Proposed Amendment of Class E Airspace; Evansville, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Evansville, IN. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures at Evansville Regional Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before September 6, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0429/Airspace Docket No. 11–AGL–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0429/Airspace Docket No. 11–AGL–9.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700

feet above the surface to accommodate new standard instrument approach procedures at Evansville Regional Airport, Evansville, IN. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 would amend controlled airspace at Evansville Regional Airport, Evansville, IN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 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 FAA 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 of the earth.

* * * * *

AGL IN E5 Evansville, IN [Amended]

Evansville Regional Airport, IN
(Lat. 38°02′18″ N., long. 87°31′51″ W.)
Pocket City VORTAC
(Lat. 37°55′42″ N., long. 87°45′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Evansville Regional Airport, and within 2.2 miles each side of the 001° bearing from the airport extending from the 6.8-mile radius to 11.2 miles north of the airport, and within 2.2 miles each side of the 181° bearing from the airport extending from the 6.8-mile radius to 11.3 miles south of the airport, and within 4 miles each side of the Pocket City VORTAC 060° radial extending from the 6.8-mile radius to the VORTAC.

Issued in Fort Worth, TX, on July 12, 2011.

Anthony D. Roetzel,

Manager, Operations Support Group, AJV–C2 ATO Central Service Center.

[FR Doc. 2011–18470 Filed 7–20–11; 8:45 am]

BILLING CODE 4901–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1216

[Notice (11–069)]

RIN 2700–AD71

Procedures for Implementing the National Environmental Policy Act

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Aeronautics and Space Administration (NASA) hereby gives notice that it is proposing revised policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality's (CEQ) Code of Federal Regulations (CFR). This proposed rule would replace procedures contained in NASA's current regulation, *Procedures for Implementing the National Environmental Policy Act*. The revision is necessary to clarify and update the current regulation. Since the previous major update of NASA's NEPA regulation in 1988, a number of Executive Orders have streamlined the Federal Government through decentralization, reduction and simplification of regulations, and management of risk. This proposed rule strives to meet the spirit of these Executive Orders, which are included in the section entitled *Procedural Requirements* herein.

DATES: Submit comments on or before September 19, 2011.

ADDRESSES: Comments can be submitted by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments electronically. Comments may be entered directly on the Web site. Electronic files may be submitted to this Web site.

2. *Mail comments to:* NASA Rulemaking Comments, Environmental Management Division, Suite 5B11, 300 E Street, SW., Washington, DC 20546. Because security screening may delay mail sent through the U.S. Postal Service, NASA encourages electronic submittal of comments.

FOR FURTHER INFORMATION CONTACT: For general information about NASA's NEPA process, readers are directed to the NASA NEPA Portal and NEPA Library at *http://www.nasa.gov/green/nepa/*. Questions may be directed to Tina Borghild Norwood, NASA NEPA Manager, at (202) 358–7324, or via e-mail at *Tina.Norwood-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

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.

Background

This proposed rule revises policies and responsibilities for assessing the effects of NASA's actions in accordance with NEPA (revising the current regulation at 14 CFR 1216.3). The last major revision of this regulation was

previously published in 53 FR 9761 on March 25, 1988. Since that time, understanding and implementation of NEPA has matured, and initiatives such as the National Performance Review have streamlined the Federal Government through decentralization, reduction, and simplification of regulations.

Introduction

NASA is amending its procedures for implementing the requirements of NEPA, 42 U.S.C. 4321–4347. The proposed amendments include: (1) Consolidating and standardizing the procedural provisions of the Agency's environmental review process under NEPA; (2) clarifying the general procedures associated with categorical exclusions (CatExs), consolidating the categories of actions subject to categorical exclusion, and amending existing and adding new CatExs; (3) adding extraordinary circumstances as factors which limit the applicability of CatExs; (4) consolidating and amending the actions that generally require an EIS or Environmental Assessment (EA); and (5) incorporating other proposed revisions consistent with the CEQ regulations.

These proposed regulations, like NASA's existing NEPA regulations, are a supplement to the CEQ regulations implementing NEPA. These proposed regulations were drafted with the objective of minimizing repetition of requirements already contained in the CEQ regulations and with the understanding that these NASA-specific regulations would be applied with (and be bounded by) the CEQ regulations. The terminology used in this Preamble and the proposed regulations include many words and phrases that are specifically defined in either NEPA or the CEQ regulations. Many of these definitions can be found in part 1508 of the CEQ regulations (40 CFR part 1508).

Revised Categorical Exclusions

As part of this rulemaking, NASA is amending existing and adding new categories of actions that are eligible for categorical exclusion and proposing to add generally applicable extraordinary circumstances to bound the use of all NASA categorical exclusions. Consistent with CEQ regulations, § 1216.304 of the proposed rule defines ''categorical exclusion'' to mean ''categories of agency actions with no individually or cumulatively significant effect on the human environment.'' Some of the new CatExs are similar to the CatExs of other Federal agencies and reflect NASA's experience with similar factual circumstances. Other new CatExs are more specific to NASA and reflect NASA's past experience with similar factual circumstances, which were considered by NASA's environmental professionals when applying NASA's current NEPA process, and which have been found, through monitoring, to have no significant impacts on the ''human environment'' (as that term is broadly defined in CEQ regulations at 40 CFR 1508.4).

The rationale supporting the amended and new CatExs and extraordinary circumstances is summarized herein. The CEQ regulations state that Federal agencies must implement NEPA procedures, in part to ''reduce paperwork and the accumulation of extraneous background data and to emphasize real environmental issues and alternatives.'' (40 CFR 1500.2(b)). NASA believes that amending current and identifying new CatExs meets the intent of this NEPA policy. For ease of comparison, the current NASA CatExs (adopted in 1988) are as follows:

(1) Research and Development (R&D) or Space Flight, Control, and Data Communications (SFCDC) activities in space science (*e.g.,* physics and astronomy research and analysis, planetary exploration mission operations and data analysis) other than specific spacecraft development and flight projects.

(2) R&D activities in space and terrestrial applications (*e.g.,* resource observations, applied research and data analysis, technology utilization) other than specific spacecraft development and flight projects.

(3) R&D activities in aeronautics and space technology and energy technology applications (*e.g.*, research and technology base, systems technology programs) other than experimental projects.

(4) R&D (or SFCDC) activities in space transportation systems engineering and scientific and technical support operations, routine transportation operations, and advanced studies.

(5) R&D (or SFCDC) activities in space tracking and data systems.

(6) Facility planning and design (funding).

(7) Minor construction of new facilities, including rehabilitation, modification, and repair.

(8) Continuing operations of a NASA installation at a level of effort, or altered operations, provided the alterations induce only social and/or economic effects, but no natural or physical environmental effects.

For proposed Agency actions that do not clearly require an EIS or EA, NASA uses a Record of Environmental Consideration (REC) to record: (1) The fact that a proposed action has been reviewed for environmental impacts and (2) the level of NEPA documentation required for the proposed action. RECs typically cite an applicable CatEx. The RECs cited in this preamble provide examples of past NASA activities that support the proposed CatEx in that the activities were monitored and did not create environmental effects.

Where a new CatEx is proposed and NASA relies on previous RECs, these RECs are available for review in the NASA NEPA Library on the NASA NEPA Web site at *http://www.nasa.gov/green/nepa/index.html.* The public portal also includes links to other relevant NASA environmental policies and practices. For example, NASA monitors actions while they are being performed and after they are completed to ensure they have caused no significant environmental effects. Such monitoring is included as part of the NASA Environmental Management System (EMS). NASA also utilizes an external environmental auditing system known as Environmental Functional Reviews (EFRs) to ensure compliance with NEPA. Both the EMS and EFR are discussed on the NASA NEPA Web site.

The NASA NEPA Web site also provides the full name and location of all ten NASA Centers and five Component Facilities.

The applicability of any CatEx to Agency actions is limited by the extraordinary- circumstances analysis required by this proposed regulation and described in detail following the discussion of the proposed CatExs. The following paragraphs review the 23 CatExs included in the proposed rule. Where CatExs are amended or consolidated, the reasons are provided. For new CatExs, the supporting rationale is explained.

NASA provides specific instructions pertaining to implementation of NEPA program responsibilities internally through NASA Procedural Requirements (NPR), 8580.1. NASA has identified that the 13 proposed CatExs under the heading ''Administrative Activities'' and ''Operations and Management Activities'' do not result in individually or cumulatively significant environmental impacts. As a result, the NPR will be updated to reflect that no environmental checklist is required. A REC will be required for the remaining ten CatExs.

§ 1216.304(d)(1): Administrative Activities including:

(i) Personnel actions, organizational changes, and procurement of routine goods and services.

(ii) Issuance of procedural rules, manuals, directives, and requirements.

(iii) Program budget proposals, disbursements, and transfer or reprogramming of funds.

(iv) Preparation of documents, including design and feasibility studies, analytical supply and demand studies, reports and recommendations, master and strategic plans, and other advisory documents.

(v) Information-gathering exercises such as inventories, audits, studies, and field studies, including water sampling, cultural resources surveys, biological surveys, geologic surveys, modeling or simulations, and routine data collection and analysis activities.

(vi) Preparation and dissemination of information, including document mailings, publications, classroom materials, conferences, speaking engagements, Web sites, and other educational/informational activities.

(vii) Software development, data analysis, and/or testing, including computer modeling.

(viii) Interpretations, amendments, and modifications to contracts, grants, or other awards.

Under the heading ''Administrative Activities,'' NASA is proposing eight new CatExs. Based on NASA's experience with these types of actions, as documented in the following examples of NASA RECs and other environmental documentation which have been completed and monitored by NASA environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

Center	Date	Title
1. JPL, CA	11/10/2008	NASA Extragalactic Database.
2. JPL, CA	03/12/2009	Advanced Information System Technology.
3. JPL, CA	05/19/2009	GIPSY/RTG Software Support for Specialized Studies.
4. NASA HQ	09/23/2009	ARRA Implementation of Venture-Class Mission, HQ ID–1095.
5. LaRC, VA	11/20/2009	Develop Data Acquisition System to be added to Embedded Avionics Research Lab.
6. LaRC, VA	03/23/2010	Contrail Study Document.

In addition, based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples of other agencies' CatExs include:

1. Army, 32 CFR, Appendix B, Section II(b)(1–14) Administrative/ Operation Activities.

2. Environmental Protection Agency, 40 CFR 6.204(a)(2)(I). Procedural, ministerial, administrative, financial, personnel, and management actions necessary to support the normal conduct of EPA business.

3. Navy, 32 CFR 775.6(f)(1), (2), (4), (5), and (10) Routine final and administrative activities.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activities under this CatEx would not result in significant environmental impacts and are, therefore, eligible for categorical exclusion.

§ 1216.304(d)(2): Operations and Management Activities including:

(i) Routine maintenance, minor construction or rehabilitation, minor demolition, minor modification, minor repair, and continuing or altered operations at, or of, existing NASA or NASA-funded or -approved facilities and equipment such as buildings, roads, grounds, utilities, communication systems, and ground support systems, such as space tracking and data systems.

(ii) Installation or removal of equipment, including component parts, at existing Government or private facilities.

(iii) Contribution of equipment, software, technical advice, exchange of data, and consultation to other agencies and public and private entities, where such assistance does not control a receiving entity's program, project, or activity.

(iv) NASA ceremonies, commemorative events, and memorial services.

(v) Routine packaging, labeling, storage, and transportation of hazardous materials and wastes in accordance with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements.

Under the heading ''Operations and Management Activities,'' NASA is proposing five CatExs. The first one is ''Routine maintenance, minor construction or rehabilitation, minor demolition, minor modification, minor repair, and continuing or altered operations at, or of, existing NASA or NASA-funded or -approved facilities and equipment such as buildings, roads, grounds, utilities, communication systems, and ground support systems, such as space tracking and data systems.'' This proposed CatEx consolidates two existing NASA CatExs. For years, NASA has relied on the existing CatExs for routine maintenance and repair activities at facilities it owns and operates. Based on NASA's experience with these types of actions, as documented in the following examples of NASA RECs and other environmental documentation which have been completed and monitored by NASA's environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

Center	Date	Title
1. MSFC, AL	09/04/2002	Replace Roofing System (103).
2. MSFC, AL	09/04/2002	Replace Roofs (101, 102).
3. KSC, FL	07/17/2007	Close/Demolish Facilities Structures Project 97963.
4. SSC, MS	08/18/2008	Replace Potable Water Well System.
5. JSC, TX	03/18/2009	Replace Hangar 280.
6. JSC, TX	03/18/2009	Repair JSC Barge Dock.
7. SSC, MS	02/23/2010	Child Day Care Drainage System Improvements.
8. SSC, MS	7/19/2010	Internal Modification North Gate Reception Center.

In addition, based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples include:

1. Army, 32 CFR part 651, Appendix B, Section II(g)(1)(2)(3). Routine repair and maintenance building equipment, roads, vehicles, and grounds.

2. EPA, 40 CFR 6.204(a)(1)(i). Actions at EPA facilities involving routine facility maintenance, repair, grounds keeping; minor rehabilitation, restoration, renovation.

3. Navy, 32 CFR 775.6(f)(8). Routine repair and maintenance of buildings, facilities, vessels, aircraft, and equipment.

4. Department of Energy (DoE), 10 CFR part 1021, Subpart D, Appendix B, B1.3. Routine maintenance/custodial service for buildings, structures, infrastructure, and equipment. DoE has proposed new NEPA regulations; see Web site *http://nepa.energy.gov/1601.htm.* DOE's proposed regulations do not modify their relevance to NASA's proposed CatEx.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activities under this CatEx would not result in significant environmental impacts and are, therefore, eligible for categorical exclusion. The second CatEx proposed under ''Operations and Management Activities'' is ''Installation or removal of equipment, including component parts, at existing government or private facilities.'' This is a new CatEx, which NASA is proposing to further clarify the existing ''minor construction'' CatEx with respect to equipment at NASA facilities. Cost and size of equipment can vary dramatically, but normally, equipment is installed within a new or existing building or facility, or outside on the walls, roof, or surrounding grounds. Examples of minor construction include, but are not limited to, replacement of boilers and chillers and installation of a nitrogen storage system outside on a small concrete pad in a grassy area adjacent to a building. As is always the case with CatExs, this CatEx would not apply when the proposed action is connected to another action that has the potential, by itself or in conjunction with the equipment action, to cause significant environmental impacts. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation which have been completed and monitored by NASA's environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

Center	Date	Title
1. MSFC, AL	09/04/2002	Replace Cell E Air Handling Units 1 and 2.
2. MSFC, AL	09/04/2002	Replace Site Wide High Voltage Oil Switches.
3. JPL, CA	02/09/2009	Multiangle Spectropolarimetric Aerosol Characterization.
4. LaRC, VA	10/08/2009	Install Acoustic Phased Array with Test Section.
5. LaRC, VA	10/08/2009	Add Jet Engine Simulator to Wind Tunnel.
6. KSC, FL	11/03/2009	Starfighters Fuel Tank Project 4244.
7. SSC, MS	03/19/2010	Removal of Emergency Generator/Fuel Aboveground Storage Tank from Building 1100.
8. WSTF, NM	07/26/2010	Gantry Crane Removal 400 Area.

The third proposed CatEx under ''Operations and Management Activities'' is ''Contribution of equipment, software, technical advice, exchange of data, and consultation to other agencies and public and private entities, where such assistance does not control the receiving entity's program, project, or activity.'' This is a new CatEx. Examples of activities that would fall under this CatEx include technical advice on implementing a science education activity or on the design or operation of a space launch facility where the advice does not control the design and implementation. Based on NASA's experience with these types of actions, as documented in the following NASA REC supported by a CatEx, which has been completed and monitored by NASA's environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

Center	Date	Title
1. JPL, CA	04/09/2009	Global Differential GPS Technology Transfer Data Exchange.

Based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples include:

1. EPA, 40 CFR 6.204(a)(2)(vii). Actions involving providing the provision of providing technical advice to Federal agencies, State and local governments, federally recognized Indian tribes, foreign governments, or public and private entities.

2. Department of Agriculture, 7 CFR 1 b.3(a)(6). Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation.

3. Federal Highway Administration, 23 CFR 771.117(c)(16). Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine change in demand.

4. DoE, 10 CFR part 1021, Subpart D, Appendix A, A11. Technical advice and planning assistance to international, national, State, and local organizations. DoE has proposed new NEPA regulations; see Web site *http://nepa.energy.gov/1601.htm.* DoE's proposed regulations do not modify their relevance to NASA's proposed CatEx.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The fourth proposed CatEx under ''Operations and Management Activities'' is ''NASA ceremonies, commemorative events, and memorial services.'' NASA enjoys celebrating America's space history. NASA celebrated its 50th Anniversary in 2008 with numerous events for employees

and the public at all of its Centers. Events generally ranged from formal, solemn services at Arlington National Cemetery to honor America's lost astronauts to events such as NASA's participation in the week-long Smithsonian Folk Festival on the National Mall in Washington, DC. This is a new CatEx. Based on NASA's experience with past ceremonies and commemorative events, which have been documented in the following four NASA RECs and other environmental documentation, which have been completed and monitored by NASA's environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

Center	Date	Title
1. KSC, FL	10/15/2001	Expedition 2 Crew Tree Planting Ceremony.
2. KSC, FL	11/15/2002	Delta 4 Launch Viewing.
3. KSC, FL	12/22/2008	2009 Center All-American Picnic.
4. KSC, FL	03/03/2010	2010 Center All-American Picnic.

In addition, based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples include:

1. Army, 32 CFR part 651, Appendix B, Section II, (b)(11). Ceremonies, funerals, and concerts, including flyovers.

2. Navy, 32 CFR 775.6(f)(6). Military ceremonies.

3. Air Force, 32 CFR part 989, Appendix B, A 2.3.38. Conducting Air Force ''open houses'' and similar events, including air shows, golf tournaments, and horse shows.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The final proposed CatEx under ''Operations and Management Activities'' is ''Routine packaging, labeling, storage, and transportation of hazardous materials and waste in accordance with applicable Federal, federally recognized Indian tribe, State, or local law or requirement.'' This is a new CatEx. NASA currently packages, labels, stores and transports hazardous material and waste in accordance with all applicable Federal, State, tribal, and local statutes and regulations. Based on this experience, NASA has determined that these actions do not result in a significant impact to the environment.

Based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples include:

1. Army, 32 CFR part 651, Appendix B, Section II (h)(4). Routine management, to include transportation, distribution, use, storage, treatment, and disposal of solid waste and/or hazardous waste.

2. Navy, 32 CFR 775.6(f)(16). Routine movement, handling, and distribution of materials, including hazardous materials/wastes.

3. Air Force, 32 CFR part 989, Appendix B, A 2.3.28. Routine transporting of hazardous materials and waste in accordance with applicable Federal, State, interstate, and local laws.

4. DoE, 10 CFR part 1021, Subpart D, Appendix B, B 3.4. Transport packaging for radioactive/hazardous material. DoE has proposed new NEPA regulations, see Web site *http://nepa.energy.gov/1601.htm*. DoE's proposed regulations do not modify their relevance to NASA's proposed CatEx.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

§ 1216.304(d)(3): Research and Development (R&D) Activities including:

(i) Research, development, and testing in compliance with all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders.

(ii) Use of small quantities of radioactive materials in a laboratory or in the field. Uses include material for instrument detectors, calibration, and other purposes. Materials must be licensed, as required, and properly contained and shielded.

(iii) Use of lasers for research and development, scientific instruments and measurements, and distance and ranging, where such use meets all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders. This applies to lasers used in spacecraft, aircraft, laboratories, watercraft, or outdoor activities.

Under the heading ''Research and Development (R&D) Activities,'' NASA is proposing three CatExs. The first one is ''Research, development, and testing in compliance with all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders.'' This proposed CatEx consolidates five existing R&D CatExs and ensures applicability to the broad range of NASA R&D activities that have minimal or no impact on the environment. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation which have been completed and monitored by NASA's environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

Center	Date	Title
1. MSFC, AL	09/04/2002	Pilot Scale Testing of Remediation Technologies.
2. JPL, CA	03/15/2006	Array Prototype: Construct of Operate.
3. KSC, FL	07/07/2008	Post Landing Orion Recovery Test.
4. LaRC, VA	10/06/2009	Develop Air Traffic Management Concepts.
5. NASA HQ	12/23/2009	ARRA-Funded Activities (HQ ID–1119).
6. GSFC, MD	04/20/2010	Operation Ice Bridge.
7. LaRC, VA	05/05/2010	Integrated Intelligence Flight Deck.

In addition, NASA has reviewed activities covered by R&D CatExs used by other Federal agencies, and these other agency activities are similar to some of NASA's R&D activities and thus provide additional support for this proposed NASA CatEx. Examples include:

1. Army, 32 CFR part 651, Appendix B, Section ii(h)(5). Research, testing, and operations conducted at existing closed facilities.

2. EPA, 40 CFR 6.204(a)(2)(iv). Actions relating to or conducted completely within a permanent, existing contained facility such as a laboratory.

3. Air Force, 32 CFR part 989, Appendix B, A 2.3.27. Normal or routine basic and applied scientific research.

NASA recognizes that these other agency examples are generally bounded to existing facilities; however, the nature of NASA's R&D activities is such that it is not practical for NASA to bound its R&D CatExs to existing facilities or even existing ranges. Instead, NASA has proposed its new ''Extraordinary Circumstances'' to bound this R&D CatEx, as well as its other CatExs. NASA has performed numerous R&D activities outside existing facilities and ranges, located both on its Centers and off its Centers, with no significant environmental impacts. The broad variety and geographic diversity of NASA's environmentally benign research activities is illustrated by the seven examples of past NASA R&D activities listed in this preamble and by the additional 24 examples included in the NASA NEPA Library on the previously mentioned NASA NEPA Web site at *http://www.nasa.gov/green/nepa/index.html.*

Based on a review of NASA's own R&D experience and the activities covered by other agencies' R&D CatExs, NASA's has determined that its R&D activity under this CatEx, as bounded by the proposed Extraordinary Circumstances, would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The second proposed CatEx under ''Research and Development (R&D) Activities'' is ''Use of small quantities of radioactive materials in a laboratory or in the field. Uses include material for instrument detectors, calibration, and other purposes. Materials must be licensed, as required, and properly contained and shielded.'' This is a new CatEx. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation which have been completed and monitored by NASA environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

Center	Date	Title
1. WFF, VA	05/18/2006	NASA African Monsoon Multidisciplinary Analysis.
2. WFF, VA	05/14/2007	Tropical Composition, Cloud, Climate Coupling (TC–4).
3. WFF, VA	03/28/2008	ARCTAS Mission.

The third proposed CatEx under ''Research and Development (R&D) Activities'' is ''Use of lasers for research and development, scientific instruments and measurements, and distance and ranging, which meet all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders. This applies to lasers in spacecraft, aircraft, laboratories, watercraft, or outdoor activities.'' This is a new CatEx. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation, which have been completed and monitored by NASA environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts. Examples include:

Center	Date	Title
1. GSFC, MD	06/20/2002	ICE SAT (Laser Research) EA.
2. GSFC, MD	11/19/2007	Push Broom Laser Altimeter Demonstration.
3. KSC, FL	02/12/2008	USCG Laser Test Project.
4. LaRC, VA	10/05/2009	1064 nm Pump Laser Transmitter.

§ 1216.304 (d)(4): Real and Personal Property Activities including:

(i) Acquisition, transfer, or disposal of any personal property, or personal property rights or interests.

(ii) Granting or acceptance of easements, leases, licenses, rights-of-entry, and permits to use NASA-controlled property or any other real property for activities which, if conducted by NASA, would be categorically excluded in accordance with this section. This assumes NASA has included any terms and conditions necessary and any required notices in the transfer documentation, as applicable, to ensure protection of the environment.

(iii) Transfer or disposal of real property or real property rights or interests if the change in use is one which, if conducted by NASA, would be categorically excluded in accordance with this section.

(iv) Transfer of real property administrative control to another Federal agency, including the return of public domain lands to the Department of the Interior (DoI) or other Federal agencies, and reporting of property as excess and surplus to the General Services Administration (GSA) for disposal, when the agency receiving administrative control (or GSA, following receipt of a report of excess) will complete any necessary NEPA review prior to any change in land use.

(v) Acquisition of real property (including facilities) where the land use will not change substantially.

Under the heading ''Real and Personal Property Activities,'' NASA is proposing five CatExs. The first is ''Acquisition, transfer, or disposal of any personal property, or personal property rights or interests.'' This is a new CatEx. Changes in ownership of personal property (such as furnishings, vehicles, office, laboratory, or field supplies and equipment), or interests in personal property do not normally have the potential to significantly affect the environment. Based on past experience with similar actions, NASA has determined that its activity under this proposed CatEx would not result in

significant environmental impact and is, therefore, eligible for categorical exclusion. Based on a review of the activities covered by a similar DoE CatEx (10 CFR part 1021, Subpart D, Appendix A, A7 ''Transfer of property, use unchanged''), NASA has further determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Accordingly, based on its own experience and that of DoE, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The second proposed CatEx under ''Real and Personal Property Activities'' is ''Granting or acceptance of easements, leases, licenses, rights-of-entry, and permits to use NASA-controlled property or any other real property for activities which, if conducted by NASA, would be categorically excluded in accordance with this section. This assumes that NASA has included any terms and conditions necessary to ensure protection of the environment and any required notices in the transfer documentation, as applicable.'' This is a new CatEx. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation, which has been completed and monitored by NASA's environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

Center	Date	Title
1. DFRC, CA	11/20/2002	Dryden Aircraft Operations Facility Lease.
2. DFRC, CA	02/23/2007	Installation of Flight Termination System.
3. KSC, FL	10/20/2008	AT&T Press Site Enhanced Use Lease.

In addition, based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples include:

1. Army, 32 CFR part 651, Appendix B, Section II (f)(1). Grants or acquisition of leases, licenses, easements, and permits for use of real property or facilities.

2. Navy, 32 CFR 775.6(f)(33). Grants of license, easement, or similar arrangements for the use of existing right-of-way. Air Force, 32 CFR part 989, Appendix B, A 2.3.19. Granting easements, leases, licenses, rights of entry, and permits to use Air Force-controlled property for activities that, if conducted by the Air Force, would be categorically excluded.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The third proposed CatEx under ''Real and Personal Property Activities'' is ''Transfer or disposal of real property or real property rights or interests if the change in use is one which, if conducted by NASA, would be categorically excluded in accordance with this section.'' This is a new CatEx. Although NASA does not have project-specific NEPA documentation to include as support for this CatEx, NASA has conducted these types of activities without any significant environmental impact. For example, Goddard Space Flight Center transferred property to a county as part of a road project which was analyzed in the Goddard Master Plan EA and Finding of No Significant Impact (FONSI).

In addition, based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples include:

1. Army, 32 CFR part 651, Appendix B, Section II (f)(6). Disposal of real property (including facilities) by the Army where the reasonably foreseeable use will not change significantly.

2. Navy, 32 CFR 775.6(f)(26)(28). Transfer of real property from the Department of the Navy to another military department or to another Federal agency. Minor land acquisition or disposal.

3. DOE, 10 CFR part 1021, Subpart D, Appendix A, A7. Transfer, lease, disposition, or acquisition of interests in personal property or real property, if property use is to remain unchanged. DOE has proposed new NEPA regulations, see Web site *http://nepa.energy.gov/1601.htm.* Language similar to that found in DOE's current regulation has been moved to Appendix B 1.24. This modification does not change its relevance to NASA's proposed CatEx.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The fourth proposed CatEx under ''Real and Personal Property Activities'' is ''Transfer of real property administrative control to another Federal agency, including the return of public domain lands to the Department of the Interior (DoI) or other Federal agencies, and reporting of property as excess and surplus to the General Services Administration (GSA) for disposal, when the agency receiving administrative control (or GSA, following receipt of a report of excess) will complete any necessary NEPA review prior to any change in land use.'' This is a new CatEx. Within the Federal real property inventory, NASA is a small land management agency. At numerous NASA Centers, NASA is collocated within or adjacent to, or is a tenant on, a DoD base with no land-expansion capacity. Excess land is typically transferred back to the landowner. Any such land no longer needed by NASA would likely be transferred to DoD. In the rare case that NASA has land to be excessed, as the Federal agent, NASA is required to declare the property excess to GSA. In such situations, NASA's action with regard to the United States' real property interest is merely an administrative action, and GSA and/or any receiving agency would conduct a NEPA review for any potential change in use. NASA has one example of a declaration of excess property that was reviewed by NASA and was determined not to require further NEPA action. The following example of NASA's activity supports this new CatEx because the activity did not have any environmental impacts.

Center	Date	Title
1. MSFC, AL	11/14/2007	Reporting to GSA Excess Property on Santa Susana Field Laboratory.

In addition, based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples include:

1. Army, 32 CFR part 651, Appendix B, Section II (f)(3). Transfer of real property to another military department or to another Federal agency and reporting that property as excess to the GSA.

2. Navy, 32 CFR 775.6(f)(26). Transfer of real property from the Department of the Navy to another military department or to another Federal agency.

3. Air Force, 32 CFR part 989, Appendix B, A 2.3.18. Transfer of administrative control of real property within the Air Force to another military department or to another Federal agency.

4. DoE, 10 CFR part 1021, Subpart D, Appendix A, A7. Transfer, lease, disposition, or acquisition of interests in personal property or real property, if property use is to remain unchanged. DoE has proposed new NEPA regulations, see Web site *http://nepa.energy.gov/1601.html.* Language similar to that found in DoE's current regulation has been moved to Appendix B 1.24. This modification does not change its relevance to NASA's proposed CatEx.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The fifth proposed CatEx under ''Real and Personal Property Activities'' is ''Acquisition of real property (including facilities) where the land use will not change substantially.'' This is a new CatEx. Although NASA does not have specific NEPA documentation to include as support for this CatEx, NASA has reviewed activities covered by CatExs used by other Federal agencies for similar actions. Based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Accordingly, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion. Examples of other agencies' CatExs include:

1. Army, 32 CFR part 651, Appendix B, Section II (f)(5). Acquisition of real property where the land use will not change substantially.

2. Navy, 32 CFR 775.6(f)(28). Minor land acquisition or disposal where anticipated or proposed land use is similar to existing land use and zoning, both in type and intensity.

3. DOE, 10 CFR part 1021, Subpart D, Appendix A, A7. Transfer, lease, disposition, or acquisition of interests in personal property or real property, if property use is to remain unchanged. DOE has proposed new NEPA regulations, see Web site *http://nepa.energy.gov/1601.html.* Language similar to that found in DOE's current regulation has been moved to Appendix B 1.24. This modification does not change its relevance to NASA's proposed CatEx.

§ 1216.304(d)(5): Aircraft and Airfield Activities including:

(i) Periodic aircraft flight activities, including training and research and development, which are routine and comply with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders.

(ii) Relocation of similar aircraft not resulting in a substantial increase in total flying hours, number of aircraft operations, operational parameters (*e.g.,* noise), or permanent personnel or logistics support requirements at the receiving installation.

Under the heading ''Aircraft and Airfield Activities,'' NASA is proposing two CatExs. The first proposed CatEx is ''Periodic aircraft flight activities, including training and research and development, which are routine and comply with applicable Federal, federally recognized Indian tribe, State and/or local laws or requirements and Executive orders.'' This is a new CatEx. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation, which have been completed and monitored by NASA's environmental staff, these actions do not result in individually or cumulatively significant environmental impacts.

Center	Date	Title
1. MSFC, AL	10/31/2007	Compliance for Lunar Reconnaissance Orbiter.
2. DFRC, CA	11/20/2007	Dryden Aircraft Operations Facility.
3. SSC, MS	07/03/2010	Subscale Diffuser Test.

In addition, based on a review of the activities covered by the Army's CatEx (32 CFR part 651, Appendix B, Section II (i)(2) ''Flying activities in compliance with FAA regulations and in accordance with normal flight patterns.''), NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Accordingly, based on its own experience and that of the Army, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The second proposed CatEx under this heading is ''Relocation of similar aircraft not resulting in a substantial increase in total flying hours, number of aircraft operations, operational parameters (*e.g.,* noise), or permanent personnel or logistics support requirements at the receiving installation.'' This is a new CatEx. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation, which have been completed and monitored by NASA's environmental staff, these actions do not result in individually or cumulatively significant environmental impacts.

Center	Date	Title
1. DFRC, CA	11/20/2007	Dryden Aircraft Operations Facility.
2. DFRC, CA	07/21/2009	U.S. Army Twin Otter Aircraft Operating out of Dryden.
3. KSC, FL	11/10/2009	Relocate Helicopter Operation.

In addition, based on a review of the activities covered by the Air Force's CatEx (32 CFR part 989, Appendix B, A 2.3.31 ''Relocating a small number of aircraft to an installation with similar aircraft that does not result in a significant increase of total flying hours or aircraft operations.''), NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Accordingly, based on its own experience and that of the Air Force, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

Extraordinary Circumstances

NASA is proposing ''extraordinary circumstances'' to mean ''those circumstances * * * that may cause a significant environmental effect such that an action that otherwise meets the requirements of a categorical exclusion may not be categorically excluded.'' This meaning is consistent with CEQ regulations at § 1508.4.

NASA has identified the following extraordinary circumstances which must be considered as part of the environmental review process. NASA will prepare an EA or an EIS when a proposed action involves unmitigated extraordinary circumstances. All seven of the extraordinary circumstances are new to NASA's NEPA regulations. They identify criteria which normally require either an EA or an EIS. Extraordinary circumstances precluding the use of CatExs occur when the proposed action:

1. Has a reasonable likelihood of having individually or cumulatively significant effects on public health, safety, or the environment.

2. Imposes uncertain or unique environmental risks.

3. Is of significantly greater scope or size than is normal for this category of action.

4. Has a reasonable likelihood of violating Federal, federally recognized Indian tribe, State, or local law or requirements imposed for the protection of the environment.

5. Involves effects on the quality of the environment that are likely to be environmentally controversial.

6. May adversely affect environmentally sensitive resources, such as, but not limited to, federally listed threatened species, their designated critical habitat, wilderness areas, floodplains, wetlands, aquifer recharge areas, coastal zones, wild and scenic rivers, and significant fish or wildlife habitat, unless the impact has been resolved through another environmental review process; *e.g.,* the Clean Water Act (CWA), the Coastal Zone Management Act (CZMA).

7. May adversely affect known national natural landmarks or cultural or historic resources, including, but not limited to, property listed on or eligible for the National Register of Historic Places, unless the impact has been resolved through another environmental review process; *e.g.,* the National Historic Preservation Act (NHPA).

NASA believes there is a relationship between the extraordinary circumstances and the criteria for actions that generally require EAs or EISs. The intent is to standardize the essential concepts and combine the criteria into a consolidated set of extraordinary circumstances applicable to all NASA actions subject to NEPA. The extraordinary circumstances are not intended to be a listing of requirements for preparing EAs or EISs. Rather, they are to be used to determine whether a categorical exclusion applies to a proposed action. What constitutes a ''unique'' environmental risk in the second extraordinary circumstance can apply to a wide range of situations. For example, it could be a small construction project that would normally be categorically excluded, but a threatened bird species has been known to nest in the general area. In such a situation, the Center may decide that preparation of an EA is warranted. Similarly, what could be ''environmentally controversial'' under paragraph 5 of the extraordinary circumstances can also apply to a wide range of actions. An example could be that a proposed action involves science, which is not conclusive as to its impacts or effects, and, as a result, is considered environmentally controversial by the public. If initial evaluation concludes that a categorical exclusion cannot be applied due to an extraordinary circumstance, the NASA Responsible Official may prepare an EA to determine whether a FONSI or an EIS is the appropriate NEPA document for the project, or the Responsible Official may proceed directly with preparing an EIS.

Actions Normally Requiring an EIS

NASA has identified five categories of Agency actions that typically require an EIS. These actions, under the existing regulation, are found at § 1216.305 (c)(1)(2) and (3) which is currently titled, *Criteria for Actions Requiring Environmental Assessments.* The proposed rule provides a stand-alone section, § 1216.308, titled, *Actions Normally Requiring an EIS.* The five types of typical NASA actions that normally require an EIS include two actions from the current regulation, which have been modified to update and provide clarity, and three new types of actions. These five actions are:

1. Development and operation of new launch vehicles or space transportation systems.

2. Development and operation of a space flight project/program which would launch and operate a nuclear reactor or radioisotope power systems and devices using a total quantity of radioactive material greater than the quantity for which the NASA Nuclear Flight Safety Assurance Manager may grant nuclear safety launch approval (i.e., a total quantity of radioactive material for which the A2 Mission Multiple (see definitions in Appendix A) is greater than 10)).

3. Development and operation of a space flight project/program which would return samples to Earth from solar system bodies (such as asteroids, comets, planets, dwarf planets, planetary moons, etc.), which would likely receive a Restricted Earth Return categorization (as defined in Appendix A) from the NASA Planetary Protection Office or the NASA Planetary Protection Subcommittee.

4. Substantial modification of a NASA facility's master plan in a manner expected to result in significant effect(s) on the quality of the human environment.

5. Substantial construction projects expected to result in significant effect(s) on the quality of the human environment, when such construction and its effects are not within the scope of an existing master plan and EIS.

Other Modifications and Additions

NASA is amending its procedures for implementing the requirements of

NEPA, 42 U.S.C. 4321–4347. These proposed regulations, like NASA's existing NEPA regulations, are a supplement to the CEQ regulations implementing NEPA. Consistent with this fact, these proposed regulations were drafted with the objective of minimizing repetition of requirements already contained in the CEQ regulations and with the understanding that these NASA-specific regulations would be applied with (and be bounded by) the CEQ regulations.

The proposed rule includes a number of additional modifications, deletions, and additions that consolidate, streamline, and clarify NASA's procedures for the implementation of NEPA. These include the following:

1. Section 1216.300, Scope, adds the express adoption by NASA of the CEQ regulations implementing NEPA.

2. The definition of key terms has been moved to Appendix A of 14 CFR 1216.3.

3. Section 1216.303, NEPA Process in NASA Planning and Decision-Making, has been updated and streamlined.

4. Section 1216.304, Categorical Exclusions, NASA has added the requirement that CatExs be reviewed every seven years, as specified in the CEQ's November 2010 guidance on categorical exclusion under NEPA.

5. Section 1216.305, Criteria for Actions Requiring Environmental Assessments, has been expanded from the previous rule and is now specifically for EAs only. It identifies five specific actions that normally require an EA.

6. Section 1216.308, Supplemental EAs and EISs have been added to recognize the potential requirement for supplemental NEPA documentation in accordance with CEQ regulations.

7. Section 1216.310, Classified Actions, has been modified to reflect current NASA policy.

8. Section 1216.311, Emergency Responses, is a new section which recognizes appropriate NEPA response in an emergency situation.

Procedural Requirements

NASA's proposed rule complies with and addresses the following procedural requirements and policies as described in more detail below:

The Regulatory Flexibility Act (January 1981)

The Regulatory Flexibility Act, 5 United States Code (U.S.C.) 601 *et seq.*, requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities.

NASA has considered the impact of the proposed rule under the Regulatory Flexibility Act and certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act (December 1980)

This proposed rule does not require information collection as defined under the Paperwork Reduction Act. Therefore, this rule does not constitute a new information collection system requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Executive Order 13132, Federalism (August 1999)

This proposed rule does not have significant Federalism effects or implications; therefore, a Federalism assessment under Executive Order 13132 is not required. The policies and procedures will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No intrusion on State policy or administration is expected if roles or responsibilities of Federal or State governments will not change and fiscal capacity will not be substantially affected.

The Unfunded Mandates Reform Act (March 1995)

This proposed rule will not significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*). The rule does not require any additional management responsibilities. Further, this rule will not produce a Federal mandate of $100 million or greater in any year; and thus, it is not a significant regulatory action under the Unfunded Mandates Reform Act. This proposed rule is not expected to have significant economic impacts nor will it impose any unfunded mandates on other Federal, State, or local government agencies to carry out specific activities.

Executive Order 12875, Enhancing the Intergovernmental Partnership (October 1993)

This proposed rule does not impose non-statutory unfunded mandates on small governments and is not subject to the requirements of Executive Order 12875.

Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (February 1994)

Executive Order 12898 establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and/or low-income populations. In developing this proposed rule in compliance with Executive Order 12898, NASA determined that the proposed rule did not raise any environmental justice concerns.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (November 2000)

Executive Order 13175 requires NASA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have Indian tribal implications, as specified in Executive Order 13175.

NASA's proposed rule imposes no new regulatory obligations on tribes. It will not have substantial direct effects on tribes, on the relationship between the national Government and tribes, or on the distribution of power and responsibilities between the national Government and tribes. These proposed regulations do not preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed rule.

Essential Fish Habitat (December 2006)

NASA has analyzed this proposed rule in accordance with Section 305 (b) of the Magnuson-Stevens Fishery Conservation and Management Act (18 U.S.C. 1855) and determined that the proposed rule will not affect the essential fish habitat of federally managed species; and, therefore, an essential fish habitat consultation on this rule is not required.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks (April 1997)

Executive Order 13045 applies to any rule that is determined to be ''economically significant,'' as defined

under Executive Order 12866, and concerns an environmental health or safety risk that may have a disproportionate effect on children. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard to mitigate health; it does not create a safety risk; and it is not ''economically significant.''

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 2001)

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule does not impose new regulatory obligations related to energy supply, distribution, or use of energy on NASA, State or local governments, tribes, or individuals. Therefore, NASA has concluded that this proposed rule is not likely to have any adverse energy effects.

Executive Order 13212, Actions To Expedite Energy-Related Projects (May 2001)

Executive Order 13212 requires agencies to expedite energy-related projects by streamlining internal processes while maintaining safety, public health, and environmental protections. The proposed rule is in conformance with this requirement as it promotes the streamlining of the existing NEPA process within NASA.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (March 1988)

This proposed rule is issued with respect to NEPA and, therefore, establishes NASA's responsibilities for early integration of environmental consideration into planning and decision making. This proposed rule is not expected to impact the provisions of Executive Order 12630.

Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management (January 2007)

Executive Order 13423 requires agencies to implement environmental management systems and improve energy efficiency. NASA is developing environmental management systems and energy efficiency programs in compliance with this Executive order. The proposed rule furthers these objectives and goals by ensuring that NEPA compliance is done in accordance with the policy set forth in the Executive order.

Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (October 2009)

Executive Order 13514 requires agencies to prepare and annually update an integrated Strategic Sustainability Performance Plan, which will prioritize Agency actions based on life-cycle return on investment. In addition, it requires agencies to establish greenhouse gas emission reduction targets and report annually on their progress in achieving these goals. The Executive order also requires agencies to improve water use efficiency and management and promote pollution prevention and elimination of waste. Sustainable building design, construction, operation, and management are also required for future Federal buildings. The proposed rule furthers the objectives and goals by ensuring that NEPA compliance is done in accordance with the policy set forth in the Executive order.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

For the reasons given in the preamble, NASA proposes to amend 14 CFR part 1216 by revising subpart 1216.3 to read as follows:

PART 1216—ENVIRONMENTAL QUALITY

Subpart 1216.3—Procedures for Implementing the National Environmental Policy Act (NEPA)

Sec.

1216.302 Responsibilities.
1216.303 NEPA process in NASA planning and decision making.
1216.304 Categorical exclusions.
1216.305 Actions requiring environmental assessments.
1216.306 Actions normally requiring an EIS.
1216.307 Programmatic EAs, and EISs, and tiering.
1216.308 Supplemental EAs and EISs.
1216.309 Mitigation and monitoring.
1216.310 Classified actions.
1216.311 Emergency responses.

Subpart 1216.3—Procedures for Implementing the National Environmental Policy Act (NEPA)

Authority: The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 *et seq.*); The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508).

§ 1216.300 Scope.

This subpart implements NEPA, setting forth NASA's policies and procedures for the early integration of environmental considerations into planning and decision making. Through this subpart, NASA adopts the CEQ regulations implementing NEPA (40 CFR parts 1500–1508) and supplements those regulations with this subpart 1216.3, for actions proposed by NASA that are subject to NEPA requirements. This regulation is to be used in conjunction with the CEQ regulations. Consistent with the CEQ regulations at 40 CFR 1500.3, no trivial violation of this part shall give rise to any independent cause of action.

§ 1216.301 Applicability.

This subpart applies to all organizational elements of NASA.

§ 1216.302 Responsibilities.

(a) The NASA Senior Environmental Official (SEO) (as defined in Appendix A to this subpart) is responsible for overseeing and guiding NASA's integration of NEPA into the Agency's planning and decision making. The SEO, with the assistance of the Office of the General Counsel (OGC), is responsible for developing NASA NEPA regulations and maintaining up-to-date Agency-wide NEPA guidance that fully integrates NEPA analysis into Agency planning and decision-making processes. The SEO shall monitor this process to ensure that these regulations and the associated Agency guidance are achieving their purposes. In addition, the NASA SEO is responsible for coordinating with other Federal agencies and the CEQ and consolidating and transmitting NASA's comments on

EISs and other NEPA documentation prepared by other Federal agencies:

(1) The NASA Headquarters/Environmental Management Division (HQ/EMD) has delegated the SEO's overall responsibility of implementing NEPA functions and guiding NASA's integration of NEPA into the Agency's planning and decision making for all NASA activities. The HQ/EMD provides advice and consultation to all NASA entities in implementing their assigned responsibilities under NEPA.

(2) Each NASA Center has an environmental management office that guides and supports the working-level functions of the NEPA process, such as evaluating proposed actions; developing, reviewing, and approving required documentation; and advising project managers.

(b) The Responsible Official shall ensure that planning and decision making for each proposed Agency action complies with these regulations and with Agency NEPA policy and guidance provided by the SEO, HQ/EMD, and the Center's environmental management office. For facility programs and projects, the Responsible Official is the individual responsible for establishing, developing, and maintaining the institutional capabilities required for the execution of programs and projects (*e.g.,* Center Director, facility manager). For other programs and projects, (*e.g.,* space flight programs/projects, R&D programs/projects) the Responsible Official is the NASA official responsible for the formulation and implementation of the program or project (*e.g.,* The Associate Administrator for Science Mission Directorate, Center Director).

(c) NASA must comply with this regulation when considering issuance of a permit, lease, easement, or grant to a non-Federal party and may seek such non-Federal party's assistance in obtaining necessary information and completing the NEPA process. The Responsible Official(s) for such action(s), in consultation with HQ/EMD and/or the Center's environmental management office, will determine the type of environmental information needed from the non-Federal party and the extent of the non-Federal party's participation in the necessary NEPA process.

§ 1216.303 NEPA process in NASA planning and decision making.

(a) NEPA requires the systematic examination of the environmental consequences of implementing a proposed Agency action. Full integration of the NEPA process with NASA project and program planning improves Agency decisions and ensures that:

(1) Planning and decision making support NASA's strategic plan commitment to sustainability and environmental stewardship and comply with applicable environmental statutes, regulations, and policies.

(2) The public is appropriately engaged in the decision-making process.

(3) Procedural risks and delays are minimized.

(b) Determining the appropriate level of NEPA review and documentation for a proposed NASA action will depend upon the scope of the action and the context and intensity of the reasonably foreseeable environmental impacts.

(c) The environmental impacts of a proposed Agency action must be considered, along with technical, economic, and other factors that are reasonably foreseeable, beginning in the early planning stage of a proposed action. NASA will take no action which would have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of its NEPA review.

§ 1216.304 Categorical exclusions.

(a) Categorical Exclusions (CatExs) are categories of Agency actions with no individually or cumulatively significant impact on the human environment and for which neither an EA nor an EIS is required. The use of a CatEx is intended to reduce paperwork, improve Government efficiency, and eliminate delays in the initiation and completion of proposed actions having no significant impact.

(b) A proposed action may be categorically excluded if the action fits within a category of actions eligible for exclusion (such categories are listed in paragraph (d) of this section), and the proposed action does not involve any extraordinary circumstances as described in paragraph (c) of this section.

(c) Extraordinary circumstances that may preclude the use of CatExs occur when the proposed action:

(1) Has a reasonable likelihood of having (individually or cumulatively) significant impacts on public health, safety, or the environment;

(2) Imposes uncertain or unique environmental risks;

(3) Is of significantly greater scope or size than is normal for this category of action;

(4) Has a reasonable likelihood of violating Federal, federally recognized Indian tribe, State, and/or local law or requirements imposed for the protection of the environment;

(5) Involves impacts on the quality of the environment that are likely to be environmentally controversial;

(6) May adversely affect environmentally sensitive resources, such as, but not limited to, federally listed threatened or endangered species, their designated critical habitat, wilderness areas, floodplains, wetlands, aquifer recharge areas, coastal zones, wild and scenic rivers, and significant fish or wildlife habitat, unless the impact has been resolved through another environmental review process; *e.g.,* the Clean Water Act (CWA), the Coastal Zone Management Act (CZMA); and

(7) May adversely affect known national natural landmarks, or cultural or historic resources, including, but not limited to, property listed on or eligible for the National Register of Historic Places, unless the impact has been resolved through another environmental review process; *e.g.,* the National Historic Preservation Act (NHPA).

(d) Specific NASA actions meeting the criteria for being categorically excluded from the requirements for EAs and EISs are as follows:

(1) Administrative Activities including:

(i) Personnel actions, organizational changes, and procurement of routine goods and services.

(ii) Issuance of procedural rules, manuals, directives, and requirements.

(iii) Program budget proposals, disbursements, and transfer or reprogramming of funds.

(iv) Preparation of documents, including design and feasibility studies, analytical supply and demand studies, reports and recommendations, master and strategic plans, and other advisory documents.

(v) Information-gathering exercises, such as inventories, audits, studies, and field studies, including water sampling, cultural resources surveys, biological surveys, geologic surveys, modeling or simulations, and routine data collection and analysis activities.

(vi) Preparation and dissemination of information, including document mailings, publications, classroom materials, conferences, speaking engagements, Web sites, and other educational/informational activities.

(vii) Software development, data analysis, and/or testing, including computer modeling.

(viii) Interpretations, amendments, and modifications to contracts, grants, or other awards.

(2) Operations and Management Activities including:

(i) Routine maintenance, minor construction or rehabilitation, minor

demolition, minor modification, minor repair, and continuing or altered operations at, or of, existing NASA or NASA-funded or -approved facilities and equipment, such as buildings, roads, grounds, utilities, communication systems, and ground support systems, such as space tracking and data systems.

(ii) Installation or removal of equipment, including component parts, at existing Government or private facilities.

(iii) Contribution of equipment, software, technical advice, exchange of data, and consultation to other agencies and public and private entities, where such assistance does not control a receiving entity's program, project, or activity.

(iv) NASA ceremonies, commemorative events, and memorial services.

(v) Routine packaging, labeling, storage, and transportation of hazardous materials and wastes, in accordance with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements.

(3) Research and Development (R&D) Activities including:

(i) Research, development, and testing in compliance with all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements and Executive orders.

(ii) Use of small quantities of radioactive materials in a laboratory or in the field. Uses include material for instrument detectors, calibration, and other purposes. Materials must be licensed, as required, and properly contained and shielded.

(iii) Use of lasers for research and development, scientific instruments and measurements, and distance and ranging, where such use meets all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders. This applies to lasers used in spacecraft, aircraft, laboratories, watercraft, or outdoor activities.

(4) Real and Personal Property Activities including:

(i) Acquisition, transfer, or disposal of any personal property, or personal property rights or interests.

(ii) Granting or acceptance of easements, leases, licenses, rights-of-entry, and permits to use NASA-controlled property, or any other real property, for activities which, if conducted by NASA, would be categorically excluded in accordance with this section. This assumes that NASA has included any required notices in transfer documentation and any terms and conditions necessary to ensure protection of the environment, as applicable.

(iii) Transfer or disposal of real property or real property rights or interests if the change in use is one which, if conducted by NASA, would be categorically excluded in accordance with this section.

(iv) Transfer of real property administrative control to another Federal agency, including the return of public domain lands to the Department of the Interior (DoI) or other Federal agencies, and reporting of property as excess and surplus to the General Services Administration (GSA) for disposal, when the agency receiving administrative control (or GSA, following receipt of a report of excess) will complete any necessary NEPA review prior to any change in land use.

(v) Acquisition of real property (including facilities) where the land use will not change substantially.

(5) Aircraft and Airfield Activities including:

(i) Periodic aircraft flight activities, including training and research and development, which are routine and comply with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders.

(ii) Relocation of similar aircraft not resulting in a substantial increase in total flying hours, number of aircraft operations, operational parameters (*e.g.,* noise), or permanent personnel or logistics support requirements at the receiving installation.

(e) The Responsible Official shall review the proposed action in its early planning stage and will consider the scope of the action and the context and intensity of any environmental impacts to determine whether there are extraordinary circumstances that could result in environmental impacts. If extraordinary circumstances exist, the Responsible Official will either withdraw the proposed action or initiate an EA or EIS.

(f) The NASA SEO will review the categorical exclusions at least every seven years, in accordance with CEQ guidance, to determine whether modifications, additions, or deletions are appropriate, based upon NASA's experience. Recommendations for modifications, additions, or deletions shall be submitted to the SEO for consideration and informal discussion with the CEQ.

§ 1216.305 Actions requiring environmental assessments.

(a) The Responsible Official will prepare an EA when a proposed action cannot be categorically excluded, and the proposed action is not expected to result in impacts that require analysis in an EIS. The Responsible Official will consider the scope of the action and the context and intensity of any environmental impacts when determining whether to prepare an EA.

(b) Typical NASA actions normally requiring an EA include:

(1) Specific spacecraft development and space flight projects/programs (as defined in Appendix A to this subpart).

(2) Actions altering the ongoing operations at a NASA Center which could lead directly, indirectly, or cumulatively to substantial natural or physical environmental impacts.

(3) Construction or modifications of facilities which are not minor.

(4) Proposed actions that are expected to result in significant changes to established land use.

(5) A space flight project/program that would return extraterrestrial samples to Earth from solar system bodies (such as asteroids, comets, planets, dwarf planets, and planetary moons), which would likely receive an Unrestricted Earth Return categorization (as defined in Appendix A) from NASA's Planetary Protection Office (PPO) or the NASA Planetary Protection Subcommittee prior to the return of samples to the Earth.

§ 1216.306 Actions normally requiring an EIS.

(a) NASA will prepare an EIS for actions with the potential to significantly impact the quality of the human environment, including actions for which an EA analysis demonstrates that significant impacts will potentially occur which will not be reduced or eliminated by changes to the proposed action or mitigation of its potentially significant impacts.

(b) Typical NASA actions normally requiring an EIS include:

(1) Development and operation of new launch vehicles or space transportation systems.

(2) Development and operation of a space flight project/program which would launch and operate a nuclear reactor or radioisotope power systems and devices using a total quantity of radioactive material greater than the quantity for which the NASA Nuclear Flight Safety Assurance Manager may grant nuclear safety launch approval (i.e., a total quantity of radioactive material for which the A2 Mission Multiple (see definitions in Appendix A) is greater than 10)).

(3) Development and operation of a space flight project/program which would return samples to Earth from solar system bodies (such as asteroids,

comets, planets, dwarf planets, and planetary moons), which would likely receive a Restricted Earth Return categorization (as defined in Appendix A) from the NASA Planetary Protection Office or the NASA Planetary Protection Subcommittee.

(4) Substantial modification of a NASA facility's master plan in a manner expected to result in significant effect(s) on the quality of the human environment.

(5) Substantial construction projects expected to result in significant effect(s) on the quality of the human environment, when such construction and its effects are not within the scope of an existing master plan and EIS.

§ 1216.307 Programmatic EAs, and EISs, and tiering.

NASA encourages the analysis of actions at the programmatic level for those programs similar in nature or broad in scope. Programmatic NEPA analyses may take place in the form of an EA or EIS. These documents allow ''tiering'' of NEPA documentation for subsequent or specific actions.

§ 1216.308 Supplemental EAs and EISs.

As detailed in CEQ regulations, supplemental documentation may be required for previous EAs or EISs (see 40 CFR 1502.9). If changed circumstances require preparation of a supplemental EA or EIS, such document will be prepared following the same general process as the original EA or EIS. No new scoping is required for a supplemental EIS; however, NASA may choose to conduct scoping.

§ 1216.309 Mitigation and monitoring.

When the analysis proceeds to an EA or EIS and mitigation measures are selected to avoid or reduce environmental impacts, such mitigation measures will be identified in the EA/FONSI or the EIS Record of Decision (ROD). NASA will implement mitigation measures (including adaptive management strategies, where appropriate) consistent with applicable FONSIs and/or RODs and will monitor their implementation and effectiveness. The Responsible Official will ensure that funding requests for such mitigation measures are included in the program or project budget.

§ 1216.310 Classified actions.

(a) Classification does not relieve NASA of the requirement to assess, document, and consider the environmental impacts of a proposed action.

(b) When classified information can reasonably be separated from other information and a meaningful environmental analysis can be produced, unclassified documents will be prepared and processed in accordance with these regulations. Classified portions will be kept separate and provided to properly cleared reviewers and decision makers in the form of a properly classified document that meets the requirements of these regulations to the extent permitted, given such classification.

§ 1216.311 Emergency responses.

(a) When the Responsible Official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation, in accordance with the provisions in sections 305 and 307 of this subpart, then the following provisions apply:

(1) The Responsible Official may take urgently needed actions that are necessary to control the immediate impacts of the emergency needed to mitigate harm to life, property, or resources. When taking such actions, the Responsible Official shall, to the extent practical, mitigate foreseeable adverse environmental impacts.

(2) At the earliest practicable time, the Responsible Official shall also notify the SEO of the emergency situation and the action(s) taken. The SEO will determine the appropriate NEPA action associated with the urgent actions taken as a result of the emergency. If the urgent actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

(b) If the Responsible Official proposes emergency actions which continue beyond the urgent actions taken as a result of the emergency, and these actions are not categorically excluded, the Responsible Official will consult with the SEO to determine the appropriate level of NEPA compliance. If continuation of the emergency actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

Appendix A to Subpart 1216.3

Acronyms and Definitions

CatEx Categorical Exclusion
CEQ Council on Environmental Quality
CFR Code of Federal Regulations
CWA Clean Water Act
CZMA Coastal Zone Management Act
DoI (U.S.) Department of the Interior
EA Environmental Assessment
EIS Environmental Impact Statement
FONSI Finding of No Significant Impact
FR Federal Register
GSA General Services Administration
NEPA National Environmental Policy Act
NHPA National Historic Preservation Act
SEO Senior Environmental Official
OGC Office of the General Counsel
PPO Planetary Protection Office
ROD Record of Decision
U.S.C. United States Code

Definitions

1. A2 Mission Multiple—The A2 Mission Multiple is a calculated value based on the total amount of radioactive material being launched. This value is used in defining the level of review and approval required for launch.

2. Earth Return Mission (also known as a Sample Return)—A subcategory of missions that would collect extraterrestrial materials from solar system bodies and return them to Earth.

3. NASA Senior Environmental Official—The Senior NASA Headquarters Official responsible for providing executive and functional leadership for environmental compliance. As of January 1, 2011, the SEO is the Assistant Administrator for Strategic Infrastructure.

4. Restricted Earth Return—A subcategory of Earth Return Missions which requires additional measures to ensure that any potential indigenous life form would be contained so that it could not impact humans or Earth's environment.

5. Space Flight Projects/Programs—Those NASA actions that develop products intended for use in space and/or that support ground and space operations for products in space.

6. Unrestricted Earth Return—NASA Procedural Requirements define this as a subcategory of Earth Return Missions that would collect extraterrestrial materials from solar system bodies (deemed by scientific opinion to have no indigenous life forms) and return those samples to Earth. No planetary protection measures are required for the inbound (return to Earth) phase of the mission.

Dated: July 14, 2011.

Charles F. Bolden, Jr.,

Administrator, National Aeronautics and Space Administration.

[FR Doc. 2011–18279 Filed 7–20–11; 8:45 am]

BILLING CODE P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1701

Privacy Act of 1974: Implementation

AGENCY: Office of the Director of National Intelligence.

ACTION: Proposed rule.

SUMMARY: The Office of the Director of National Intelligence (ODNI) proposes to exempt six new systems of records from certain provisions of the Privacy Act. In addition, the ODNI proposes to invoke a subsection of the Privacy Act

as an additional basis for exempting records in ODNI/OIG–003 (Office of Inspector General Investigation and Interview Records, published in the **Federal Register** on Dec. 28, 2007) from these provisions of the Act.

DATES: Submit comments on or before August 30, 2011.

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

Federal eRulemaking Portal: *http://www.regulations.gov.*

Mail: Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Hackett, Director, Information Management Office, (703) 275–2215.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act, 5 U.S.C. 552a(e)(4), the ODNI describes in the notice section of today's **Federal Register** the following new systems of records: Human Resources Records; Personnel Security Records; Freedom of Information Act, Privacy Act and Mandatory Declassification Review Request Records; IT Systems Activity and Access Records, Security Clearance Reciprocity Hotline Records; and IT Network Support, Administration and Analysis Records. For the reasons stated herein, ODNI seeks the ability in administering these records to invoke the exemptions permitted by subsection (k) of the Privacy Act as may be necessary to protect records of intelligence or investigative interest. The ODNI has previously established a rule that it will preserve the exempt status of records it receives when the reason for the exemption remains valid. See 32 CFR Part 1701.20(a)(2) at 73 FR 166531 (March 28, 2008).

Regulatory Flexibility Act

This proposed rule affects the manner in which ODNI collects and maintains information about individuals. ODNI certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, no regulatory flexibility analysis is required for this rule.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the ODNI to comply with small entity requests for information and advice about compliance with statutes and regulations within the ODNI jurisdiction. Any small entity that has a question regarding this document may address it to the information contact listed above. Further information regarding SBREFA is available on the Small Business Administration's Web page at *http://www.sga.gov/advo/law/law_lib.html.*

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the ODNI consider the impact of paperwork and other burdens imposed on the public associated with the collection of information. There are no information collection requirements associated with this proposed rule and therefore no analysis of burden is required.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866. This rule will not have an annual effect on the economy of $100 million or more or otherwise adversely affect the economy or sector of the economy in a material way; will not create inconsistency with or interfere with other agency action; will not materially alter the budgetary impact of entitlements, grants, fees or loans or the rights and obligations of recipients thereof; or raise legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order. Accordingly, further regulatory evaluation is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule imposes no Federal mandate on any State, local, or tribal government or on the private sector. Accordingly, no UMRA analysis of economic and regulatory alternatives is required.

Executive Order 13132, Federalism

Executive Order 13132 requires ODNI to examine the implications for the distribution of power and responsibilities among the various levels of government resulting from this proposed rule. ODNI concludes that the proposed rule does not affect the rights, roles and responsibilities of the States, involves no preemption of State law and does not limit State policymaking discretion. This rule has no federalism implications as defined by the Executive Order.

Environmental Impact

The ODNI has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended, 42 U.S.C. 6362. This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 32 CFR Part 1701

Records and Privacy Act.

For the reasons set forth above, ODNI proposes to amend 32 CFR part 1701 as follows:

PART 1701—ADMINISTRATION OF RECORDS UNDER THE PRIVACY ACT OF 1974

1. The authority citation for part 1701 continues to read as follows:

Authority: 50 U.S.C. 401–441; 5 U.S.C. 552a.

Subpart B—[Amended]

2. Amend § 1701.24 by revising paragraph (a) introductory text, and adding paragraphs (a)(15) through (a)(20), and (b)(7) through (b)(12), to read as follows:

§ 1701.24 Exemption of Office of the Director of National Intelligence (ODNI) systems of records.

(a) The ODNI may invoke its authority to exempt the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsections (k)(1), (k)(2) or (k)(5) of the Act as noted in the individual new systems notices and in the existing system notice entitled Office of Inspector General Investigation and Interview Records (ODNI/OIG–003), published at 72 FR 37902 (December 28, 2007).

* * * * *

(15) Human Resources Records (ODNI–16).

(16) Personnel Security Records (ODNI–17).

(17) Freedom of Information Act, Privacy Act and Mandatory Declassification Review Requests Records (ODNI–18).

(18) IT Systems Activity and Access Records (ODNI–19).

(19) Security Clearance Reciprocity Hotline Records (ODNI–20).

(20) IT Network Support, Administration and Analysis Records (ODNI–21) .

(b) * * *

(7) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an intelligence or investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(8) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption, records in this system may be exempted from access and amendment to the extent necessary to honor promises of confidentiality to persons providing information concerning a candidate for position. Inability to maintain such confidentiality would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(9) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern. In the absence of a national security basis for exemption under subsection (k)(1), records in this system may be exempted from the relevance requirement pursuant to subsection (k)(5) because it is not possible to determine in advance what exact information may assist in determining the qualifications and suitability of a candidate for position. Seemingly irrelevant details, when combined with other data, can provide a useful composite for determining whether a candidate should be appointed.

(10) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment, and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(11) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods, and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(12) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

Dated: July 14, 2011.

Mark W. Ewing,

Chief Management Officer.

[FR Doc. 2011–18187 Filed 7–20–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2011–0030]

RIN 0651–AC58

Revision of the Materiality to Patentability Standard for the Duty To Disclose Information in Patent Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or PTO) is proposing to revise the standard for materiality for the duty to disclose information in patent applications and reexamination proceedings in light of the decision by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit or Court) in *Therasense, Inc.* v. *Becton, Dickinson & Co.* Specifically, the Office is proposing to revise the materiality standard for the duty to disclose to match the materiality standard, as defined in *Therasense,* for the inequitable conduct doctrine. While *Therasense* does not require the Office to harmonize the materiality standards underlying the duty of disclosure and the inequitable conduct doctrine, the Office believes that there are important reasons to do so. The materiality standard set forth in *Therasense* should reduce the frequency with which applicants and practitioners are being charged with inequitable conduct, consequently reducing the incentive to submit information disclosure statements containing marginally relevant information and enabling applicants to be more forthcoming and helpful to the Office. At the same time, it should also continue to prevent fraud on the Office and other egregious forms of misconduct. Additionally, harmonization of the materiality standards is simpler for the patent system as a whole.

DATES: The Office solicits comments from the public on this proposed rule change. Written comments must be received on or before September 19, 2011 to ensure consideration. No public hearing will be held.

ADDRESSES: Comments concerning this notice should be sent by electronic mail message over the Internet addressed to *AC58.comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Hiram H. Bernstein, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy. Although comments may be submitted by mail, the Office prefers to receive comments via the Internet.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal. The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Internet (*http://www.uspto.gov*). Because comments will be made available for public inspection,

information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein, Senior Legal Advisor; Kenneth M. Schor, Senior Legal Advisor; or Nicole D. Haines, Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7707, (571) 272–7710, or (571) 272–7717, respectively, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Hiram H. Bernstein.

SUPPLEMENTARY INFORMATION: The Office is proposing to revise the materiality standard for the duty to disclose information to the Office in patent applications and reexamination proceedings set forth in §§ 1.56(b) and 1.555(b) in light of the Federal Circuit's decision in *Therasense, Inc.* v. *Becton, Dickinson & Co.,* ___ F.3d ___, 2011 WL 2028255 (Fed. Cir. 2011) (*en banc*). Specifically, the Office is proposing to adopt the standard for materiality required to establish inequitable conduct as defined in *Therasense* as the standard for materiality under §§ 1.56(b) and 1.555(b).

In *Therasense,* the Court defined materiality using a ''but-for-plus'' standard. As the general rule, the Court explained that ''[w]hen an applicant fails to disclose prior art to the PTO, that prior art is but-for material if the PTO would not have allowed a claim had it been aware of the undisclosed prior art.'' *Therasense,* 2011 WL 2028255, at *11. Said differently, the Court explained: ''[I]n assessing the materiality of a withheld reference, the court must determine whether the PTO would have allowed the claim if it had been aware of the undisclosed reference[,] * * * apply[ing] the preponderance of the evidence standard and giv[ing] claims their broadest reasonable construction.'' *Id.* The Court also recognized that ''affirmative acts of egregious misconduct,'' *Id.* at *12, before the PTO are unacceptable: ''Although but-for materiality generally must be proved to satisfy the materiality prong of inequitable conduct, this court recognizes an exception in cases of affirmative egregious misconduct.'' *Id.* The Court reasoned that ''a patentee is unlikely to go to great lengths to deceive the PTO with a falsehood unless it believes that the falsehood will affect issuance of the patent.'' *Id.* The Court clarified that ''neither mere nondisclosure of prior art references to the PTO nor failure to mention prior art references in an affidavit constitutes affirmative egregious misconduct.'' *Id.* Lastly, the Court identified the submission of an unmistakably false affidavit as an example of affirmative egregious misconduct. *Id.*

Historically, the Federal Circuit connected the materiality standard for inequitable conduct with the PTO's materiality standard for the duty of disclosure. That is, the Court has invoked the materiality standard for the duty of disclosure to measure materiality in cases raising claims of inequitable conduct. In doing so, the Court has utilized both the ''reasonable examiner'' standard set forth in the 1977 version of § 1.56(b) and current § 1.56(b) promulgated in 1992. *See, e.g., Am. Hoist & Derrick Co.* v. *Sowa & Sons, Inc.,* 725 F.2d 1350, 1363 (Fed. Cir. 1984); *Bruno Indep. Living Aids, Inc.* v. *Acorn Mobility Servs., Inc.,* 394 F.3d 1348, 1352–53 (Fed. Cir. 2005). While the *Therasense* Court severed what existed of the historical connection between the two materiality standards, as most recently articulated in *Digital Control Inc.* v. *Charles Mach. Works,* 437 F.3d 1309, 1315–16 (Fed. Cir. 2006) (identifying the PTO's current standard as one of many standards the courts could apply), it did not indicate that the Office must apply the standard for materiality required to establish inequitable conduct under *Therasense* as the standard for determining materiality under § 1.56(b) or § 1.555(b). As the dissent in *Therasense* noted, ''the scope of the court-made [inequitable conduct] doctrine is not inseparably tied to the breadth of the PTO's disclosure rules.'' *Therasense,* 2011 WL 2028255, at *33. The Office, however, believes that there are important reasons to amend § 1.56(b) and § 1.555(b) so that the PTO's materiality standard for the duty of disclosure matches the materiality standard for inequitable conduct.

While not as inclusive as current § 1.56(b), the Office expects that the ''but-for-plus'' standard from *Therasense* will result in patent applicants providing the most relevant information and reduce the incentive for applicants to submit information disclosure statements containing only marginally relevant information out of an abundance of caution. The Court stated that its ''but-for-plus'' standard, ''[b]y creating an exception to punish affirmative egregious acts without penalizing the failure to disclose information that would not have changed the issuance decision, * * * strikes a necessary balance between encouraging honesty before the PTO and preventing unfounded accusations of inequitable conduct.'' *Therasense,* 2011 WL 2028255, at *12. Thus, the Office expects that the ''but-for-plus'' standard will reduce the frequency with which applicants and practitioners are being charged with inequitable conduct, thereby reducing the incentive for applicants to submit marginally relevant information to the Office. At the same time, it will continue to prevent applicants from deceiving the Office and breaching their duty of candor and good faith.

The Office also believes that a unitary materiality standard is simpler for the patent bar to implement. Under the single ''but-for-plus'' standard of materiality, patent applicants will not be put in the position of having to meet one standard for materiality as defined in *Therasense* in defending against inequitable conduct allegations and a second, different materiality standard to fulfill the duty to disclose before the Office.

The Office recognizes that it previously considered, and rejected, a ''but-for'' standard for the duty of disclosure in 1992 when it promulgated current § 1.56(b). Duty of Disclosure, 57 FR 2021, 2024 (Jan. 17, 1992). The affirmative egregious misconduct exception set forth in *Therasense* addresses the Office's long-standing concern about the types of unscrupulous conduct that could occur unchecked under a pure ''but-for'' standard.

Although the Office is proposing to revise §§ 1.56(b) and 1.555(b) to match the ''but-for-plus'' materiality standard announced in *Therasense,* the Office recognizes that *Therasense* could be reviewed by the U.S. Supreme Court. Because the rule making process is lengthy and because the Office prefers to receive and consider public comments before issuing a final rule, the Office is proceeding in parallel with the possibility of a *Therasense certiorari* petition. Should a petition for *certiorari* be filed and the Supreme Court grant review of the case, the Office will consider delaying issuance of a final rule until the Supreme Court has issued its decision.

Additionally, the Office is considering further actions that may provide an incentive for applicants to assist the Office by explaining/clarifying the relationship of prior art to the claimed invention. While this form of information would not implicate the standard of materiality as that term has been defined in *Therasense,* and therefore would not be required under the proposed changes to § 1.56, the

Office believes it is worthwhile to explore ways to encourage applicants to submit information, beyond that required under the *Therasense* materiality standard, that would be helpful and useful in advancing examination.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.56: Section 1.56(b) as proposed to be amended would provide that information is material to patentability if it is material under the standard set forth in *Therasense,* and that information is material to patentability under *Therasense* if: (1) The Office would not allow a claim if it were aware of the information, applying the preponderance of the evidence standard and giving the claim its broadest reasonable construction; or (2) the applicant engages in affirmative egregious misconduct before the Office as to the information. As stated in *Therasense,* neither mere nondisclosure of information to the Office nor failure to mention information in an affidavit, declaration, or other statement to the Office constitutes affirmative egregious misconduct. *Therasense,* 2011 WL 2028255, at *12.

The Office notes that, under the ''but-for-plus'' standard of *Therasense,* information is not material if the pending claim is allowable, applying the preponderance of the evidence standard and giving the claim its broadest reasonable construction, and the applicant does not engage in affirmative egregious misconduct before the Office as to the information. The Office recognizes the tension inherent in a disclosure standard based on unpatentability, but appreciates and expects that patent applicants are inclined to be forthcoming and submit information beyond that required by proposed Rule 56, in an effort to assist examiners in performing their duties. The Office wishes to facilitate and encourage such efforts by applicants. While applicants should avoid drafting claims that are unpatentable in the face of the prior art they disclose, the Office will not regard information disclosures as admissions of unpatentability for any claims in the application. *See* § 1.97(h). In addition, there is no duty under § 1.56 to submit information that is not material under the ''but-for-plus'' standard of *Therasense* and § 1.56(b).

Section 1.555: Section 1.555(b) as proposed to be amended would provide that information is material to patentability if it is material under the standard set forth in *Therasense,* and that information is material to patentability under *Therasense* if: (1) The Office would not find a claim patentable if it were aware of the information, applying the preponderance of the evidence standard and giving the claim its broadest reasonable construction; or (2) the patent owner engages in affirmative egregious misconduct before the Office as to the information. Again as stated in *Therasense,* neither mere nondisclosure of information to the Office nor failure to mention information in an affidavit, declaration, or other statement to the Office constitutes affirmative egregious misconduct. *Therasense,* 2011 WL 2028255, at *12.

Section 1.933 is directed to the duty of disclosure in *inter partes* reexamination proceedings; however, the statement as to materiality of information simply incorporates § 1.555. Thus, no revision is proposed for § 1.933.

Rule Making Considerations

A. Regulatory Flexibility Act: For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This notice proposes to harmonize the standard for materiality under §§ 1.56 and 1.555 with the standard for materiality required to establish inequitable conduct. Additionally, the single harmonized materiality standard should reduce the incentives to submit information of marginal relevance. This notice does not propose any additional fees or requirements on patent applicants or patentees. Therefore, the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12866 (Regulatory Planning and Review): This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

C. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible: (1) Used the best available techniques to quantify costs and benefits, and has considered values such as equity, fairness and distributive impacts; (2) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rule making docket; (3) attempted to promote coordination, simplification and harmonization across government agencies and identified goals designed to promote innovation; (4) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (5) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

D. Executive Order 13132 (Federalism): This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

E. Executive Order 13175 (Tribal Consultation): This rule making will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

F. Executive Order 13211 (Energy Effects): This rule making is not a significant energy action under Executive Order 13211 because this rule making is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

G. Executive Order 12988 (Civil Justice Reform): This rule making meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

H. Executive Order 13045 (Protection of Children): This rule making does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

I. Executive Order 12630 (Taking of Private Property): This rule making will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

J. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of

Representatives and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

K. Unfunded Mandates Reform Act of 1995: The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

L. National Environmental Policy Act: This rule making will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

M. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rule making does not contain provisions which involve the use of technical standards.

N. Paperwork Reduction Act: The changes in this rule making involve information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice has been reviewed and approved by OMB under OMB control number 0651–0031. This rule making proposes to harmonize the standard for materiality under §§ 1.56 and 1.555 with the standard for materiality required to establish inequitable conduct. This notice does not propose any additional fees or information collection requirements on patent applicants or patentees.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.56 is amended by revising paragraph (b) to read as follows:

§ 1.56 Duty to disclose information material to patentability.

* * * * *

(b) Information is material to patentability if it is material under the standard set forth in *Therasense, Inc.* v. *Becton, Dickinson & Co.,* ___ F.3d ___ (Fed. Cir. 2011). Information is material to patentability under *Therasense* if:

(1) The Office would not allow a claim if it were aware of the information, applying the preponderance of the evidence standard and giving the claim its broadest reasonable construction; or

(2) The applicant engages in affirmative egregious misconduct before the Office as to the information.

* * * * *

3. Section 1.555 is amended by revising paragraph (b) to read as follows:

§ 1.555 Information material to patentability in ex parte reexamination and inter partes reexamination proceedings.

* * * * *

(b) Information is material to patentability if it is material under the standard set forth in *Therasense, Inc.* v. *Becton, Dickinson & Co.,* ___ F.3d ___ (Fed. Cir. 2011). Information is material to patentability under *Therasense* if:

(1) The Office would not find a claim patentable if it were aware of the information, applying the preponderance of the evidence standard and giving the claim its broadest reasonable construction; or

(2) The patent owner engages in affirmative egregious misconduct before the Office as to the information.

* * * * *

Dated: July 15, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–18408 Filed 7–20–11; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0469; FRL–9441–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia and Ohio; Determinations of Attainment of the 1997 Annual Fine Particle Standard for the Parkersburg-Marietta and Wheeling Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make a determination that the Parkersburg-Marietta, West Virginia-Ohio (WV-OH) nonattainment area and the Wheeling, WV-OH fine particle ($PM_{2.5}$) nonattainment areas (hereafter referred to as ''Areas'') have attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. These determinations are based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period. EPA is finding these Areas to be in attainment, in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 22, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0469 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0469, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0469. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Region 3, Irene Shandruk, Office of Air Program Planning (3AP30), Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–2166, *shandruk.irene@epa.gov.* Region 5, Carolyn Persoon, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What actions is EPA proposing?
II. What is the background of these actions?
III. What is EPA's analysis of the relevant air quality data?
IV. What are the effects of these actions?
V. Statutory and Executive Order Reviews

I. What actions is EPA proposing?

In accordance with section 179(c)(1) of the CAA, EPA is proposing to determine that the Parkersburg-Marietta, WV-OH $PM_{2.5}$ nonattainment area and the Wheeling, WV-OH $PM_{2.5}$ nonattainment area have attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. The proposal is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period and EPA's determinations are in accordance with EPA's $PM_{2.5}$ Implementation Rule of April 25, 2007 (72 FR 20664).

II. What is the background of these actions?

On July 18, 1997 (62 FR 36852), EPA established a health-based $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations (hereafter referred to as ''the annual $PM_{2.5}$ NAAQS'' or ''the annual standard''). At that time, EPA also established a 24-hour standard of 65 μg/m³ (the ''1997 24-hour standard''). See 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas were designated nonattainment for the 1997 $PM_{2.5}$ NAAQS during this designations process. See 40 CFR 81.349 (West Virginia) and 40 CFR 81.336 (Ohio). The Parkersburg-Marietta, WV-OH nonattainment area consists of Wood County, WV, the Grant Tax District of Pleasants County, WV, and Washington County, OH. The Wheeling, WV-OH nonattainment area consists of Marshall County, WV, Ohio County, WV, and Belmont County, OH.

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour standard of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations (the ''2006 24-hour standard''). On November 13, 2009, EPA designated the Parkersburg-Marietta and Wheeling Areas as attainment for the 2006 24-hour standard (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Parkersburg-Marietta and Wheeling Areas were designated as nonattainment for the annual standard, but attainment for the 1997 24-hour standard. Today's action, however, does not address attainment of either the 1997 or the 2006 24-hour standard.

In response to legal challenges of the annual standard promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded this standard to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (DC Cir. 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard.

EPA previously made clean data determinations related to the 1997 annual $PM_{2.5}$ NAAQS for each of these Areas pursuant to 40 CFR 51.1004(c). These determinations were made on November 20, 2009 (74 FR 60199) and remain in effect.

Under CAA section 179(c), EPA is required to make a determination that a nonattainment area has attained by its attainment date, and publish that determination in the **Federal Register**. The determination of attainment is not equivalent to a redesignation, and the state must still meet the statutory requirements for redesignation in order for the Areas to be redesignated to attainment.

Complete, quality-assured, and certified $PM_{2.5}$ air quality monitoring data recorded in the EPA Air Quality System (AQS) database for 2007 through 2009, show that the Parkersburg-Marietta, WV-OH and Wheeling, WV–OH nonattainment areas attained the 1997 annual $PM_{2.5}$ NAAQS by their applicable attainment date.

III. What is EPA's analysis of the relevant air quality data?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50 and recorded in the data in the EPA AQS database for the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas for the monitoring period from 2007 through 2009. On the basis of that review, EPA proposes to determine that the Areas attained the 1997 annual $PM_{2.5}$ NAAQS by the April 5, 2010 attainment date.

Under EPA regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentrations, 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. The values calculated in accordance with 40 CFR part 50, Appendix N, are referred to as design values, and these values are used to determine if an area is attaining the $PM_{2.5}$ NAAQS. According to the $PM_{2.5}$ implementation rule, the attainment date for these Areas is April 5, 2010 and the monitoring data from 2007 through 2009 is used to determine if the Areas attained by April 5, 2010.

Table 1 shows the $PM_{2.5}$ design values for each monitor in the Parkersburg-Marietta, WV-OH nonattainment area and the Wheeling, WV-OH nonattainment area, respectively, for the years 2007–2009. All 2007–2009 design values are below 15.0 $\mu g/m^3$, and all monitors meet the data completeness requirements. Therefore, the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas attained the 1997 annual $PM_{2.5}$ NAAQS by their attainment date.

TABLE 1.—ANNUAL $PM_{2.5}$ DESIGN VALUES FOR PARKERSBURG-MARIETTA, WV-OH AND WHEELING, WV–OH NONATTAINMENT AREAS *

State	County	Monitor ID	Certified annual design value 2007–2009 ($\mu g/m^3$)
Parkersburg-Marietta, WV-OH			
West Virginia	Wood County	541071002	13.7
	Grant Tax District of Pleasants County	No monitor	
Ohio	Washington County	No monitor	
Wheeling, WV-OH			
West Virginia	Marshall County	540511002	13.4
	Ohio County	540690010	13.2
Ohio	Belmont County	No monitor	

* The data presented in Table 1 are available at *http://www.epa.gov/air/airtrends/values.html.*

IV. What are the effects of these actions?

If EPA's proposed determination that the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas have attained the 1997 annual $PM_{2.5}$ standard by the applicable attainment date (April 5, 2010) is finalized, EPA will have met its requirement pursuant to section 179(c) of the CAA to make a determination based on the Areas' air quality data as of the attainment date that the Areas attained the standard by that date. The action described above is a proposed determination regarding the Parkersburg-Marietta, WV-OH, and Wheeling, WV-OH areas' attainment of the 1997 annual $PM_{2.5}$ NAAQS.

Finalizing this proposed action would not constitute a redesignation of the Areas to attainment of the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing this proposed action does not involve approving maintenance plans for the Areas as required under section 175A of the CAA, nor would it find that the Areas have met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Parkersburg-Marietta, WV-OH, and Wheeling, WV-OH areas would remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Areas meet the CAA requirements for redesignation to attainment and take action to redesignate the Parkersburg-Marietta, WV-OH, and Wheeling, WV-OH areas.

EPA is soliciting comment on the action discussed in this document. These comments will be considered before EPA takes final action. Please note that if EPA receives adverse comment on either of the proposed determinations described above and if that determination may be severed from the remainder of the final agency action, EPA may adopt as final these provisions of the final agency action that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

This action proposes to make attainment determinations based on air quality data and would not, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements. 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 Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these proposed $PM_{2.5}$ NAAQS attainment determinations do 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 25, 2011.

W.C. Early,

Acting Regional Administrator, Region 3.

Dated: June 24, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–18427 Filed 7–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2011–0451; FRL–9441–1]

Approval and Promulgation of Air Quality Plans: State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve an April 20, 2011, request from the State of Missouri to exempt sources of Nitrogen Oxides (NO_X) in the Missouri portion of the St. Louis (MO-IL) metropolitan 8-hour ozone nonattainment area from the Clean Air Act (CAA) requirements for NO_X Reasonably Available Control Technology (RACT) for purposes of attaining the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Missouri NO_X RACT waiver request for its portion of the St. Louis metropolitan 8-hour ozone nonattainment area is based on the most recent three years of complete, quality-assured ozone monitoring data, which demonstrate that additional reductions of NO_X emissions in the Area would not contribute to attainment of the 1997 8-hour ozone NAAQS.

DATES: Comments on this proposed action must be received in writing by August 22, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2011–0451, by mail to Ms. Lachala Kemp, Air Planning and Development Branch, U.S. EPA Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Air Planning and Development Branch, 901 N. 5th Street, Kansas City, Kansas 66101 at 913 551 7214, or by e-mail at *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's request to exempt sources of NO_X in the Missouri portion of the St. Louis (MO-IL) metropolitan 8-hour ozone nonattainment area from the CAA requirements for NO_X RACT for purposes of attaining the 1997 8-hour ozone NAAQS. EPA is approving the Missouri's SIP revision as a direct final rule without prior proposal because the Agency views this as a non-controversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register.**

Dated: July 12, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–18182 Filed 7–20–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1038]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On March 25, 2009, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 74 FR 12799. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Monroe County, Kentucky, and Incorporated Areas. Specifically, it addresses the following flooding sources: Bailey Branch (backwater effects from Cumberland River), Butler Branch (backwater effects from Cumberland River), Cumberland River, McFarland Creek (backwater effects from Cumberland River), Meredith Creek (backwater effects from Cumberland River), Meshack Creek (backwater effects from Cumberland River), Murphy Branch (backwater effects from Cumberland River), and Ward Branch (backwater effects from Cumberland River).

DATES: Comments are to be submitted on or before October 19, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1038, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities

participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Corrections

In the proposed rule published at 74 FR 12799 in the March 25, 2009, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Monroe County, Kentucky, and Incorporated Areas'' addressed the flooding source Cumberland River. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for that flooding source. In addition, it did not include the following flooding sources: Bailey Branch (backwater effects from Cumberland River), Butler Branch (backwater effects from Cumberland River), McFarland Creek (backwater effects from Cumberland River), Meredith Creek (backwater effects from Cumberland River), Meshack Creek (backwater effects from Cumberland River), Murphy Branch (backwater effects from Cumberland River), and Ward Branch (backwater effects from Cumberland River). In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Monroe County, Kentucky, and Incorporated Areas				
Bailey Branch (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 950 feet upstream of the Cumberland River confluence.	None	+526	Unincorporated Areas of Monroe County.
Butler Branch (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.6 mile upstream of the Cumberland River confluence.	None	+534	Unincorporated Areas of Monroe County.
Cumberland River	Approximately 5,200 feet downstream of the McFarland Creek confluence.	None	+518	Unincorporated Areas of Monroe County.
	At the Glasscock Creek confluence	None	+536	
McFarland Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.5 mile upstream of the Cumberland River confluence.	None	+519	Unincorporated Areas of Monroe County.
Meredith Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.7 mile upstream of the Cumberland River confluence.	None	+524	Unincorporated Areas of Monroe County.
Meshack Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 1,700 feet upstream of the Cumberland River confluence.	None	+531	Unincorporated Areas of Monroe County.
Murphy Branch (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.5 mile upstream of the Cumberland River confluence.	None	+522	Unincorporated Areas of Monroe County.
Ward Branch (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 1,450 feet upstream of the Cumberland River confluence.	None	+528	Unincorporated Areas of Monroe County.

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Monroe County

Maps are available for inspection at the Monroe County Courthouse, 200 North Main Street, Tompkinsville, KY 42167.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 8, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–18351 Filed 7–20–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

RIN 0648–XA480

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Operation of the Northeast Gateway Liquefied Natural Gas Port Facility in Massachusetts Bay

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

ACTION: Proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from Tetra Tech EC, Inc., on behalf of the Northeast Gateway® Energy Bridge™ L.P. (Northeast Gateway or NEG), for authorization to take marine mammals, by harassment, incidental to operating a liquefied natural gas (LNG) port facility by NEG, in Massachusetts Bay for the period of August 2011 through August 2012. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to Northeast Gateway to incidentally take, by harassment, small numbers of marine mammals for a period of 1 year.

DATES: Comments and information must be received no later than August 22, 2011.

ADDRESSES: Comments should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing e-mail comments on this action is *ITP.Guan@noaa.gov.* Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. A copy of the application and a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) and is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

The Maritime Administration (MARAD) and U.S. Coast Guard (USCG) Final Environmental Impact Statement (Final EIS) on the Northeast Gateway Energy Bridge LNG Deepwater Port license application is available for viewing at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A)–(D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On April 8, 2011, NMFS received an application from Excelerate Energy, L.P. (Excelerate) and Tetra Tech EC, Inc., on behalf of Northeast Gateway for an authorization to take 13 species of marine mammals by Level B harassment incidental to operations of an LNG port facility in Massachusetts Bay. They are: North Atlantic right whale, humpback whale, fin whale, minke whale, long-finned pilot whale, Atlantic white-sided dolphin, bottlenose dolphin, common dolphin, killer whale, Risso's dolphin, harbor porpoise, harbor seal, and gray seal. Since LNG Port operation activities have the potential to take marine mammals, a marine mammal take authorization under the MMPA is warranted. On May 7, 2007, NMFS issued an IHA to Northeast Gateway and Algonquin Gas Transmission, L.L.C. (Algonquin) to allow for the incidental harassment of small numbers of marine mammals resulting from the construction and operation of the NEG Port and the Algonquin Pipeline Lateral (72 FR 27077; May 14, 2007). Subsequently, NMFS issued three one-year IHAs for the take of marine mammals incidental to the operation of the NEG Port activity pursuant to section 101(a)(5)(D) of the MMPA (73 FR 29485; May 21, 2008; 74 FR 45613; September 3, 2009, and 75 FR 53672; September 1, 2010). The current IHA expires on August 30, 2011. Therefore, the company is seeking a new IHA, because it is believed that marine mammals could be affected by noise generated by operating the dynamic positioning system during the docking of LNG vessels at the NEG Port.

Description of the Activity

The Northeast Gateway Port is located in Massachusetts Bay and consists of a submerged buoy system to dock specially designed LNG carriers approximately 13 mi (21 km) offshore of Massachusetts in Federal waters approximately 270 to 290 ft (82 to 88 m) in depth. This facility delivers regasified LNG to onshore markets via the Algonquin Pipeline Lateral (Pipeline Lateral). The Pipeline Lateral consists of a 16.1-mile (25.8-kilometer) long, 24-inch (61-centimeter) outside diameter natural gas pipeline which interconnects the Port to an offshore natural gas pipeline known as the HubLine.

The Northeast Gateway Port consists of two subsea Submerged Turret Loading™ (STL) buoys, each with a flexible riser assembly and a manifold connecting the riser assembly, via a steel Flowline, to the subsea Pipeline Lateral. Northeast Gateway utilizes vessels from its current fleet of specially designed Energy Bridge™ Regasification Vessels (EBRVs), each capable of transporting approximately 2.9 billion ft^3 (82 million m^3) of natural gas condensed to 4.9 million ft^3 (138,000 m^3) of LNG. Northeast Gateway has recently added two vessels to its fleet that have a cargo capacity of approximately 151,000 m^3 (5.3 million ft^3). The mooring system installed at the Northeast Gateway Port is designed to handle each class of vessel. The EBRVs would dock to the STL buoys, which would serve as both the single-point mooring system for the vessels and the delivery conduit for natural gas. Each of the STL buoys is secured to the seafloor using a series of suction anchors and a combination of chain/cable anchor lines.

The proposed activity of operation of the Northeast Gateway LNG Port is described next.

NEG Port Operations

During NEG Port operations, EBRVs servicing the Northeast Gateway Port will utilize the newly configured and International Maritime Organization (IMO)-approved Boston Traffic Separation Scheme (TSS) on their approach to and departure from the Northeast Gateway Port at the earliest practicable point of transit. EBRVs will maintain speeds of 12 knots or less while in the TSS, unless transiting the Off Race Point Seasonal Management Area (SMA) between the dates of March 1 and April 30, or the Great South Channel SMA between the dates of April 1 and July 31, or when there have been active right whale sightings, active acoustic detections, or both, within 24 hours of each scheduled data review period, in the vicinity of the transiting EBRV in the TSS or at the NEG Port whereby the vessels must slow their speeds to 10 knots or less. Appendix A of the IHA application contains the Marine Mammal Detection, Monitoring, and Response Plan for Operation of the Northeast Gateway Energy Bridge Deepwater Port and Algonquin Pipeline Lateral, which describes in detail the measures required for EBRVs transiting in the TSS or within the NEG Port area.

As an EBRV makes its final approach to the Northeast Gateway Port, vessel speed will gradually be reduced to 3 knots when the vessel is within 1.86 mi (3 km) out of the Northeast Gateway Port to less than 1 knot at a distance of 1,640 ft (500 m) from the Northeast Gateway Port. When an EBRV arrives at the Northeast Gateway Port, it would retrieve one of the two permanently anchored submerged STL buoys and make final connection to the buoy through a series of engine and bow thruster actions. The EBRV would require the use of thrusters for dynamic positioning during docking procedure. Typically, the docking procedure is completed over a 10- to 30-minute period, with the thrusters activated as necessary for short periods of time in bursts, not a continuous sound source. Once connected to the buoy, the EBRV will begin vaporizing the LNG into its natural gas state using the onboard regasification system. As the LNG is regasified, natural gas will be transferred at pipeline pressures off the EBRV through the STL buoy and flexible riser via a steel flowline leading to the connecting Pipeline Lateral. When the LNG vessel is on the buoy, the vessel would be allowed to ''weathervane'' by wind and currents on the single-point mooring system; therefore, thrusters will not be used to maintain a stationary position.

It is estimated that the NEG Port could receive approximately 65 cargo deliveries a year. During this time period, thrusters would be engaged in use for docking at the NEG Port approximately 10 to 30 minutes for each vessel arrival and departure.

Detailed information on the operation activities can be found in the MARAD/USCG Final EIS on the Northeast Gateway Project (see **ADDRESSES** for availability). Detailed information on the LNG facility's operation and noise generated from operations was also published in the **Federal Register** for the proposed IHA for Northeast Gateway's LNG Port construction and operations on March 13, 2007 (72 FR 11328).

Description of Marine Mammals in the Area of the Specified Activities

Marine mammal species that potentially occur in the vicinity of the Northeast Gateway facility include several species of cetaceans and pinnipeds:

North Atlantic right whale (*Eubalaena glacialis*),
humpback whale (*Megaptera novaeangliae*),
fin whale (*Balaenoptera physalus*),
minke whale (*B. acutorostrata*),
long-finned pilot whale (*Globicephala melas*),
Atlantic white-sided dolphin (*Lagenorhynchus acutus*),
bottlenose dolphin (*Tursiops truncatus*),
common dolphin (*Delphinus delphis*),
killer whale (*Orcinus orca*),
Risso's dolphin (*Grampus griseus*),
harbor porpoise (*Phocoena phocoena*),
harbor seal (*Phoca vitulina*), and
gray seal (*Halichoerus grypus*).

Information on those species that may be affected by this activity is discussed in detail in the USCG Final EIS on the Northeast Gateway LNG proposal. Please refer to that document for more information on these species and potential impacts from construction and operation of this LNG facility. In addition, general information on these marine mammal species can also be found in Würsig *et al.* (2000) and in the NMFS Stock Assessment Reports (Waring *et al.,* 2011). This latter document is available at: *http://www.nefsc.noaa.gov/publications/tm/tm219/.* An updated summary on several commonly sighted marine mammal species distribution and abundance in the vicinity of the proposed action area is provided below.

Humpback Whale

The highest abundance for humpback whales is distributed primarily along a relatively narrow corridor following the 100-m (328 ft) isobath across the southern Gulf of Maine from the northwestern slope of Georges Bank, south to the Great South Channel, and northward alongside Cape Cod to Stellwagen Bank and Jeffreys Ledge. The relative abundance of whales increases in the spring with the highest occurrence along the slope waters (between the 40- and 140-m, or 131- and 459-ft, isobaths) off Cape Cod and Davis Bank, Stellwagen Basin and Tillies Basin and between the 50- and 200-m (164- and 656-ft) isobaths along the inner slope of Georges Bank. High abundance is also estimated for the waters around Platts Bank. In the

summer months, abundance increases markedly over the shallow waters (<50 m, or <164 ft) of Stellwagen Bank, the waters (100—200 m, or 328—656 ft) between Platts Bank and Jeffreys Ledge, the steep slopes (between the 30- and 160-m isobaths) of Phelps and Davis Bank north of the Great South Channel towards Cape Cod, and between the 50- and 100-m (164- and 328-ft) isobath for almost the entire length of the steeply sloping northern edge of Georges Bank. This general distribution pattern persists in all seasons except winter, when humpbacks remain at high abundance in only a few locations including Porpoise and Neddick Basins adjacent to Jeffreys Ledge, northern Stellwagen Bank and Tillies Basin, and the Great South Channel. The best estimate of abundance for Gulf of Maine, formerly western North Atlantic, humpback whales is 847 animals (Waring *et al.,* 2009). Current data suggest that the Gulf of Maine humpback whale stock is steadily increasing in size, which is consistent with an estimated average trend of 3.1 percent in the North Atlantic population overall for the period 1979–1993 (Stevick *et al.,* 2003, cited in Waring *et al.,* 2009).

Fin Whale

Spatial patterns of habitat utilization by fin whales are very similar to those of humpback whales. Spring and summer high-use areas follow the 100-m (328 ft) isobath along the northern edge of Georges Bank (between the 50- and 200-m (164- and 656-ft) isobaths), and northward from the Great South Channel (between the 50- and 160-m, or 164- and 525-ft, isobaths). Waters around Cashes Ledge, Platts Bank, and Jeffreys Ledge are all high-use areas in the summer months. Stellwagen Bank is a high-use area for fin whales in all seasons, with highest abundance occurring over the southern Stellwagen Bank in the summer months. In fact, the southern portion of the Stellwagen Bank National Marine Sanctuary (SBNMS) is used more frequently than the northern portion in all months except winter, when high abundance is recorded over the northern tip of Stellwagen Bank. In addition to Stellwagen Bank, high abundance in winter is estimated for Jeffreys Ledge and the adjacent Porpoise Basin (100- to 160-m, 328- to 656-ft, isobaths), as well as Georges Basin and northern Georges Bank. The best estimate of abundance for the western North Atlantic stock of fin whales is 2,269 (Waring *et al.,* 2009). Currently, there are insufficient data to determine population trends for this species.

Minke Whale

Like other piscivorous baleen whales, highest abundance for minke whale is strongly associated with regions between the 50- and 100-m (164- and 328-ft) isobaths, but with a slightly stronger preference for the shallower waters along the slopes of Davis Bank, Phelps Bank, Great South Channel and Georges Shoals on Georges Bank. Minke whales are sighted in the SBNMS in all seasons, with highest abundance estimated for the shallow waters (approximately 40 m, or 131 ft) over southern Stellwagen Bank in the summer and fall months. Platts Bank, Cashes Ledge, Jeffreys Ledge, and the adjacent basins (Neddick, Porpoise and Scantium) also support high relative abundance. Very low densities of minke whales remain throughout most of the southern Gulf of Maine in winter. The best estimate of abundance for the Canadian East Coast stock, which occurs from the western half of the Davis Strait to the Gulf of Mexico, of minke whales is 3,312 animals (Waring *et al.,* 2009). Currently, there are insufficient data to determine population trends for this species.

North Atlantic Right Whale

North Atlantic right whales are generally distributed widely across the southern Gulf of Maine in spring with highest abundance located over the deeper waters (100- to 160-m, or 328- to 525-ft, isobaths) on the northern edge of the Great South Channel and deep waters (100 B 300 m, 328-984 ft) parallel to the 100-m (328-ft) isobath of northern Georges Bank and Georges Basin. High abundance is also found in the shallowest waters (< 30 m, or <98 ft) of Cape Cod Bay, over Platts Bank and around Cashes Ledge. Lower relative abundance is estimated over deep-water basins including Wilkinson Basin, Rodgers Basin and Franklin Basin. In the summer months, right whales move almost entirely away from the coast to deep waters over basins in the central Gulf of Maine (Wilkinson Basin, Cashes Basin between the 160- and 200-m, or 525- and 656-ft, isobaths) and north of Georges Bank (Rogers, Crowell and Georges Basins). Highest abundance is found north of the 100-m (328-ft) isobath at the Great South Channel and over the deep slope waters and basins along the northern edge of Georges Bank. The waters between Fippennies Ledge and Cashes Ledge are also estimated as high-use areas. In the fall months, right whales are sighted infrequently in the Gulf of Maine, with highest densities over Jeffreys Ledge and over deeper waters near Cashes Ledge and Wilkinson Basin. In winter, Cape Cod Bay, Scantum Basin, Jeffreys Ledge, and Cashes Ledge were the main high-use areas. Although SBNMS does not appear to support the highest abundance of right whales, sightings within SBNMS are reported for all four seasons, albeit at low relative abundance. Highest sighting within SBNMS occurred along the southern edge of the Bank.

The western North Atlantic population size was estimated to be at least 345 individuals in 2005 based on a census of individual whales identified using photo-identification techniques (Waring *et al.,* 2009). This value is a minimum and does not include animals that were alive prior to 2003 but not recorded in the individual sightings database as seen from December 1, 2003, to October 10, 2008. It also does not include calves known to be born during 2005 or any other individual whale seen during 2005 but not yet entered into the catalog (Waring *et al.,* 2009). Examination of the minimum alive population index calculated from the individual sightings database, as it existed on October 10, 2008, for the years 1990–2005 suggests a positive trend in numbers. These data reveal a significant increase in the number of catalogued whales alive during this period but with significant variation due to apparent losses exceeding gains during 1998–1999. Mean growth rate for the period 1990–2005 was 1.8 percent (Waring *et al.,* 2009).

Long-Finned Pilot Whale

The long-finned pilot whale is more generally found along the edge of the continental shelf (a depth of 330 to 3,300 ft, or 100 to 1,000 m), choosing areas of high relief or submerged banks in cold or temperate shoreline waters. This species is split between two subspecies: The Northern and Southern subspecies. The Southern subspecies is circumpolar with northern limits of Brazil and South Africa. The Northern subspecies, which could be encountered during operation of the NEG Port, ranges from North Carolina to Greenland (Reeves *et al.,* 2002; Wilson and Ruff, 1999). In the western North Atlantic, long-finned pilot whales are pelagic, occurring in especially high densities in winter and spring over the continental slope, then moving inshore and onto the shelf in summer and autumn following squid and mackerel populations (Reeves *et al.,* 2002). They frequently travel into the central and northern Georges Bank, Great South Channel, and Gulf of Maine areas during the summer and early fall (May and October) (NOAA, 1993). According to the species stock report,

the population estimate for the Western North Atlantic long-finned pilot whale is 26,535 individuals (Waring *et al.,* 2010). Currently, there are insufficient data to determine population trends for the long-finned pilot whale.

Atlantic White-Sided Dolphin

In spring, summer and fall, Atlantic white-sided dolphins are widespread throughout the southern Gulf of Maine, with the high-use areas widely located either side of the 100-m (328-ft) isobath along the northern edge of Georges Bank, and north from the Great South Channel to Stellwagen Bank, Jeffreys Ledge, Platts Bank and Cashes Ledge. In spring, high-use areas exist in the Great South Channel, northern Georges Bank, the steeply sloping edge of Davis Bank and Cape Cod, southern Stellwagen Bank and the waters between Jeffreys Ledge and Platts Bank. In summer, there is a shift and expansion of habitat toward the east and northeast. High-use areas are identified along most of the northern edge of Georges Bank between the 50- and 200-m (164- and 656-ft) isobaths and northward from the Great South Channel along the slopes of Davis Bank and Cape Cod. High numbers of sightings are also recorded over Truxton Swell, Wilkinson Basin, Cashes Ledge and the bathymetrically complex area northeast of Platts Bank. High numbers of sightings of white-sided dolphin are recorded within SBNMS in all seasons, with highest density in summer and most widespread distributions in spring located mainly over the southern end of Stellwagen Bank. In winter, high numbers of sightings are recorded at the northern tip of Stellwagen Bank and Tillies Basin.

A comparison of spatial distribution patterns for all baleen whales (Mysticeti) and all porpoises and dolphins combined show that both groups have very similar spatial patterns of high- and low-use areas. The baleen whales, whether piscivorous or planktivorous, are more concentrated than the dolphins and porpoises. They utilize a corridor that extended broadly along the most linear and steeply sloping edges in the southern Gulf of Maine indicated broadly by the 100 m (328 ft) isobath. Stellwagen Bank and Jeffreys Ledge support a high abundance of baleen whales throughout the year. Species richness maps indicate that high-use areas for individual whales and dolphin species co-occur, resulting in similar patterns of species richness primarily along the southern portion of the 100-m (328-ft) isobath extending northeast and northwest from the Great South Channel. The southern edge of Stellwagen Bank and the waters around the northern tip of Cape Cod are also highlighted as supporting high cetacean species richness. Intermediate to high numbers of species are also calculated for the waters surrounding Jeffreys Ledge, the entire Stellwagen Bank, Platts Bank, Fippennies Ledge and Cashes Ledge. The best estimate of abundance for the western North Atlantic stock of white-sided dolphins is 63,368 (Waring *et al.,* 2009). A trend analysis has not been conducted for this species.

Killer Whale, Common Dolphin, Bottlenose Dolphin, Risso's Dolphin, and Harbor Porpoise

Although these five species are some of the most widely distributed small cetacean species in the world (Jefferson *et al.,* 1993), they are not commonly seen in the vicinity of the proposed project area in Massachusetts Bay (Wiley *et al.,* 1994; NCCOS, 2006; Northeast Gateway Marine Mammal Monitoring Weekly Reports, 2007). The total number of killer whales off the eastern U.S. coast is unknown, and present data are insufficient to calculate a minimum population estimate or to determine the population trends for this stock (Blaylock *et al.,* 1995). The best estimate of abundance for the western North Atlantic stock of common dolphins is 120,743 animals, and a trend analysis has not been conducted for this species (Waring *et al.,* 2007). There are several stocks of bottlenose dolphins found along the eastern U.S. from Maine to Florida. The stock that may occur in the area of the Neptune Port is the western North Atlantic coastal northern migratory stock of bottlenose dolphins. The best estimate of abundance for this stock is 7,489 animals (Waring *et al.,* 2009). There are insufficient data to determine the population trend for this stock. The best estimate of abundance for the western North Atlantic stock of Risso's dolphins is 20,479 animals (Waring *et al.,* 2009). There are insufficient data to determine the population trend for this stock. The best estimate of abundance for the Gulf of Maine/Bay of Fundy stock of harbor porpoise is 89,054 animals (Waring *et al.,* 2009). A trend analysis has not been conducted for this species.

Harbor Seal and Gray Seal

In the U.S. waters of the western North Atlantic, both harbor and gray seals are usually found from the coast of Maine south to southern New England and New York (Waring *et al.*, 2010).

Along the southern New England and New York coasts, harbor seals occur seasonally from September through late May (Schneider and Payne, 1983). In recent years, their seasonal interval along the southern New England to New Jersey coasts has increased (deHart, 2002). In U.S. waters, harbor seal breeding and pupping normally occur in waters north of the New Hampshire/Maine border, although breeding has occurred as far south as Cape Cod in the early part of the 20th century (Temte *et al.*, 1991; Katona *et al.,* 1993). The best estimate of abundance for the western North Atlantic stock of harbor seals is 99,340 animals (Waring *et al.*, 2009). Between 1981 and 2001, the uncorrected counts of seals increased from 10,543 to 38,014, an annual rate of 6.6 percent (Gilbert *et al.*, 2005, cited in Waring *et al.*, 2009). Although gray seals are often seen off the coast from New England to Labrador, within the U.S. waters, only small numbers of gray seals have been observed pupping on several isolated islands along the Maine coast and in Nantucket-Vineyard Sound, Massachusetts (Katona *et al.*, 1993; Rough, 1995). In the late 1990s, a year-round breeding population of approximately 400 gray seals was documented on outer Cape Cod and Muskeget Island (Warring *et al.*, 2007). Depending on the model used, the minimum estimate for the Canadian gray seal population was estimated to range between 125,541 and 169,064 animals (Trzcinski *et al.*, 2005, cited in Waring *et al.*, 2009); however, present data are insufficient to calculate the minimum population estimate for U.S. waters. Waring *et al*, (2009) note that gray seal abundance in the U.S. Atlantic is likely increasing, but the rate of increase is unknown.

Brief Background on Marine Mammal Hearing

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): functional

hearing is estimated to occur between approximately 7 Hz and 22 kHz;

• Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;

• High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and

• Pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, 13 marine mammal species (11 cetacean and two pinniped species) are likely to occur in the NEG Port area. Of the 11 cetacean species likely to occur in NEG's project area, four are classified as low frequency cetaceans (*i.e.*, North Atlantic right, humpback, fin, and minke whales), six are classified as mid-frequency cetaceans (*i.e.*, killer and pilot whales and bottlenose, common, Risso's, and Atlantic white-sided dolphins), and one is classified as a high-frequency cetacean (*i.e.*, harbor porpoise) (Southall *et al.*, 2007).

Potential Effects of the Specified Activity on Marine Mammals

Potential effects of NEG's proposed port operations would most likely be acoustic in nature. LNG port operations introduce sound into the marine environment. The effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The noise may be too weak to be heard at the location of the animal (*i.e.*, lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) The noise may be audible but not strong enough to elicit any overt behavioral response; (3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases; (4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat; (5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise; (6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and (7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic (or explosive events) may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

There are three general categories of sounds recognized by NMFS: continuous (such as shipping sounds), intermittent (such as vibratory pile driving sounds), and impulse. No impulse noise activities, such as blasting or standard pile driving, are associated with this project. The noise sources of potential concern are regasification/offloading (which is a continuous sound) and dynamic positioning of vessels using thrusters (an intermittent sound) from EBRVs during docking at the NEG port facility. Noise generated from regasification/offloading is modeled to be under 120 dB, therefore, no take is expected from this activity. Based on research by Malme *et al.* (1983; 1984), for both continuous and intermittent sound sources, Level B harassment is presumed to begin at received levels of 120-dB. The detailed description of the noise that would result from the proposed LNG Port operations is provided in the **Federal Register** notice for the initial construction and operations of the NEG LNG Port facility and Pipeline Lateral in 2007 (72 FR 27077; May 14, 2007).

NEG Port Activities

Underwater noise generated at the NEG Port has the potential to result from two distinct actions, including closed-loop regasification of LNG and/or EBRV maneuvering during coupling and decoupling with STL buoys. To evaluate the potential for these activities to result in underwater noise that could harass marine mammals, Excelerate conducted field sound survey studies during periods of March 21 to 25, 2005, and August 6 to 9, 2006, while the EBRV *Excelsior* was both maneuvering and moored at the operational Gulf Gateway Port located 116 mi (187 km) offshore in the Gulf of Mexico (the Gulf) (see Appendices B and C of the NEG application). EBRV maneuvering conditions included the use of both stern and bow thrusters required for dynamic positioning during coupling. These data were used to model underwater sound propagation at the NEG Port. The pertinent results of the field survey are provided as underwater sound source pressure levels as follows:

• Sound levels during closed-loop regasification ranged from 104 to 110 dB. Maximum levels during steady state operations were 108 dB.

• Sound levels during coupling operations were dominated by the periodic use of the bow and stern thrusters and ranged from 160 to 170 dBL.

Figures 1–1 and 1–2 of NEG's IHA application present the net acoustic impact of one EBRV operating at the NEG Port. Thrusters are operated intermittently and only for relatively short durations of time. The resulting area within the 120 dB isopleth is less than 1 km^2 with the linear distance to the isopleths extending 430 m (1,411 ft). The area within the 180 dB isopleth is very localized and will not extend beyond the immediate area where EBRV coupling operations are occurring.

The potential impacts to marine mammals associated with sound propagation from vessel movements, anchors, chains and LNG regasification/offloading could be the temporary and short-term displacement of seals and whales from within the 120-dB zones ensonified by these noise sources. Animals would be expected to re-occupy the area once the noise ceases.

Anticipated Effects on Habitat

Approximately 4.8 acres of seafloor has been converted from soft substrate to artificial hard substrate. The soft-bottom benthic community may be replaced with organisms associated with

naturally occurring hard substrate, such as sponges, hydroids, bryozoans, and associated species. The benthic community in the up to 43 acres (worst case scenario based on severe 100-year storm with EBRVs occupying both STL buoys) of soft bottom that may be swept by the anchor chains while EBRVs are docked will have limited opportunity to recover, so this area will experience a long-term reduction in benthic productivity. In addition, disturbance from anchor chain movement would result in increased turbidity levels in the vicinity of the buoys that could affect prey species for marine mammals; however, as indicated in the final EIS/EIR, these impacts are expected to be short-term, indirect, and minor.

Daily removal of sea water from EBRV intakes will reduce the food resources available for planktivorous organisms. Water usage would be limited to the standard requirements of NEG's normal support vessel. As with all vessels operating in Massachusetts Bay, sea water uptake and discharge is required to support engine cooling, typically using a once-through system. The rate of seawater uptake varies with the ship's horsepower and activity and therefore will differ between vessels and activity type. For example, the *Gateway Endeavor* is a 90-ft (27 m) vessel powered with a 1,200 horsepower diesel engine with a four-pump seawater cooling system. This system requires seawater intake of about 68 gallons per minute (gpm) while idling and up to about 150 gpm at full power. Use of full power is required generally for transit. A conservatively high estimate of vessel activity for the *Gateway Endeavor* would be operation at idle for 75% of the time and full power for 25% of the time. During routine activities, this would equate to approximately 42,480 gallons of seawater per 8-hour work day. When compared to the engine cooling requirements of an EBRV over an 8-hour period (approximately 17.62 million gallons), the *Gateway Endeavor* uses about 0.2% of the EBRV requirement. To put this water use into context, the final EIS/EIR for the proposed NEG Port concluded that the impacts to fish populations and to marine mammals that feed on fish or plankton resulting from water use by an EBRV during port operations (approximately 39,780,000 gallons over each 8-day regasification period) would be minor. Water use by support vessels during routine port activities would not materially add to the overall impacts evaluated in the final EIS/EIR. Additionally, discharges associated with the *Gateway Endeavor* and/or other support/maintenance vessels that are 79 feet or greater in length, are now regulated under the Clean Water Act (CWA) and must receive and comply with the United States Environmental Protection Agency (EPA) Vessel General Permit (VGP). The permit incorporates the USCG mandatory ballast water management and exchange standards, and provides technology- and water quality-based effluent limits for other types of discharges, including deck runoff, bilge water, graywater, and other pollutants. It also establishes specific corrective actions, inspection, and monitoring requirements and recordkeeping and reporting requirements for each vessel. Massachusetts Bay circulation will not be altered, so plankton will be continuously transported into the NEG Port area. The removal of these species is minor and unlikely to affect in a measurable way the food sources available to marine mammals.

In conclusion, NMFS has preliminarily determined that NEG's proposed port operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize. Proposed Monitoring and Mitigation Measures.

In order to issue an incidental take authorization (ITA) under the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). In addition, NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

During the construction and operations of the NEG LNG Port facility in prior years, Northeast Gateway submitted reports on marine mammal sightings in the area. While it is difficult to draw biological conclusions from these reports, NMFS can make some general conclusions. Data gathered by MMOs is generally useful to indicate the presence or absence of marine mammals (often to a species level) within the safety zones (and sometimes without) and to document the implementation of mitigation measures. Though it is by no means conclusive, it is worth noting that no instances of obvious behavioral disturbance as a result of Northeast Gateway's activities were observed by the MMOs.

In addition, Northeast Gateway was required to maintain an array of Marine Autonomous Recording Units (MARUs) to monitor calling North Atlantic right whales (humpback, fin, and minke whale calls were also able to be detected).

For the proposed IHA to NEG for LNG port operations, NMFS proposes the following monitoring and mitigation measures.

Protected Species Observers

For activities related to the NEG LNG port operations, all individuals onboard the EBRVs responsible for the navigation and lookout duties on the vessel must receive training prior to assuming navigation and lookout duties, a component of which will be training on marine mammal sighting/reporting and vessel strike avoidance measures. Crew training of EBRV personnel will stress individual responsibility for marine mammal awareness and reporting.

If a marine mammal is sighted by a crew member, an immediate notification will be made to the Person-in-Charge on board the vessel and the Northeast Port Manager, who will ensure that the required vessel strike avoidance measures and reporting procedures are followed.

Vessel Strike Avoidance

(1) All EBRVs approaching or departing the port will comply with the Mandatory Ship Reporting (MSR) system to keep apprised of right whale sightings in the vicinity. Vessel operators will also receive active detections from an existing passive acoustic array prior to and during transit through the northern leg of the Boston TSS where the buoys are installed.

(2) In response to active right whale sightings (detected acoustically or reported through other means such as the MSR or Sighting Advisory System (SAS)), and taking into account safety and weather conditions, EBRVs will take appropriate actions to minimize the risk of striking whales, including reducing speed to 10 knots or less and alerting personnel responsible for navigation and lookout duties to concentrate their efforts.

(3) EBRVs will maintain speeds of 12 knots or less while in the TSS until reaching the vicinity of the buoys (except during the seasons and areas defined below, when speed will be limited to 10 knots or less). At 1.86 mi (3 km) from the NEG port, speed will be reduced to 3 knots, and to less than 1 knot at 1,640 ft (500 m) from the buoy.

(4) EBRVs will reduce transit speed to 10 knots or less over ground from March 1–April 30 in all waters bounded by straight lines connecting the following points in the order stated below. This area is known as the Off Race Point SMA and tracks NMFS regulations at 50 CFR 224.105:

42°30′00.0″ N–069°45′00.0″ W; thence to 42°30′00.0″ N–070°30′00.0″ W; thence to 42°12′00.0″ N–070°30′00.0″ W; thence to 42°12′00.0″ N–070°12′00.0″ W; thence to 42°04′56.5″ N–070°12′00.0″ W; thence along charted mean high water line and inshore limits of COLREGS limit to a latitude of 41°40′00.0″ N; thence due east to 41°41′00.0″ N–069°45′00.0″ W; thence back to starting point.

(5) EBRVs will reduce transit speed to 10 knots or less over ground from April 1–July 31 in all waters bounded by straight lines connecting the following points in the order stated below. This area is also known as the Great South Channel SMA and tracks NMFS regulations at 50 CFR 224.105:

42°30′00.0″ N–69°45′00.0″ W
41°40′00.0″ N–69°45′00.0″ W
41°00′00.0″ N–69°05′00.0″ W
42°09′00.0″ N–67°08′24.0″ W
42°30′00.0″ N–67°27′00.0″ W
42°30′00.0″ N–69°45′00.0″ W

(6) LNGRVs are not expected to transit Cape Cod Bay. However, in the event transit through Cape Cod Bay is required, LNGRVs will reduce transit speed to 10 knots or less over ground from January 1–May 15 in all waters in Cape Cod Bay, extending to all shorelines of Cape Cod Bay, with a northern boundary of 42°12′00.0″ N latitude.

(7) A vessel may operate at a speed necessary to maintain safe maneuvering speed instead of the required 10 knots only if justified because the vessel is in an area where oceanographic, hydrographic, and/or meteorological conditions severely restrict the maneuverability of the vessel and the need to operate at such speed is confirmed by the pilot on board or, when a vessel is not carrying a pilot, the master of the vessel. If a deviation from the 10-knot speed limit is necessary, the reasons for the deviation, the speed at which the vessel is operated, the latitude and longitude of the area, and the time and duration of such deviation shall be entered into the logbook of the vessel. The master of the vessel shall attest to the accuracy of the logbook entry by signing and dating it.

Research Passive Acoustic Monitoring (PAM) Program

Northeast Gateway shall monitor the noise environment in Massachusetts Bay in the vicinity of the NEG Port using an array of 19 MARUs that were deployed initially in April 2007 to collect data during the preconstruction and active construction phases of the NEG Port and Algonquin Pipeline Lateral. A description of the MARUs can be found in Appendix A of the NEG and Algonquin application. These 19 MARUs will remain in the same configuration during full operation of the NEG Port. The MARUs collect archival noise data and are not designed to provide real-time or near-real-time information about vocalizing whales. Rather, the acoustic data collected by the MARUs shall be analyzed to document the seasonal occurrences and overall distributions of whales (primarily fin, humpback, and right whales) within approximately 10 nautical miles (18 km) of the NEG Port and shall measure and document the noise ''footprint'' of Massachusetts Bay so as to eventually assist in determining whether an overall increase in noise in the Bay associated with the NEG Port might be having a potentially negative impact on marine mammals. The overall intent of this system is to provide better information for both regulators and the general public regarding the acoustic footprint associated with long-term operation of the NEG Port in Massachusetts Bay and the distribution of vocalizing marine mammals during NEG Port activities.

In addition to the 19 MARUs, Northeast Gateway will deploy 10 auto-detection buoys (ABs) within the TSS for the operational life of the NEG Port. A description of the ABs is provided in Appendix A of this NEG and Algonquin's application. The purpose of the ABs shall be to detect a calling North Atlantic right whale an average of 5 nm (9.26 km) from each AB (detection ranges will vary based on ambient underwater conditions). The AB system shall be the primary detection mechanism that alerts the EBRV captains to the occurrence of right whales, heightens EBRV awareness, and triggers necessary mitigation actions as described in the Marine Mammal Detection, Monitoring, and Response Plan included as Appendix A of the NEG application.

Northeast Gateway has engaged representatives from Cornell University's Bioacoustics Research Program and the Woods Hole Oceanographic Institution as the consultants for developing, implementing, collecting, and analyzing the acoustic data; reporting; and maintaining the acoustic monitoring system.

Further information detailing the deployment and operation of arrays of 19 passive seafloor acoustic recording units (MARUs) centered on the terminal site and the 10 ABs that are to be placed at approximately 5-m (8.0-km) intervals within the recently modified TSS can be found in the Marine Mammal Detection, Monitoring, and Response Plan included as Appendix A of the NEG and Algonquin application.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Reporting

The Project area is within the Mandatory Ship Reporting Area (MSRA), so all vessels entering and exiting the MSRA will report their activities to WHALESNORTH. During all phases of the Northeast Gateway LNG Port operations, sightings of any injured or dead marine mammals will be reported immediately to the USCG and NMFS, regardless of whether the injury or death is caused by project activities.

An annual report on marine mammal monitoring and mitigation shall be submitted to NMFS Office of Protected Resources and NMFS Northeast

Regional Office within 90 days after the expiration of the IHA. The annual report shall include data collected for each distinct marine mammal species observed in the project area in Massachusetts Bay during the period of LNG facility operation. Description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to operation activities shall also be included in the annual report.

General Conclusions Drawn From Previous Monitoring Reports

Based on monthly activity reports submitted to NMFS for the period between August 2010 and May 2011, there were no activities at the NEG Port during the period. Therefore, no take of marine mammals occurred or were reported during this period.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B harassment is anticipated as a result of NEG's operational activities. Anticipated take of marine mammals is associated with operation of dynamic positioning during the docking of the LNG vessels. The regasification process itself is an activity that does not rise to the level of taking, as the modeled source level for this activity is 108 dB. Certain species may have a behavioral reaction to the sound emitted during the activities. Hearing impairment is not anticipated. Additionally, vessel strikes are not anticipated, especially because of the speed restriction measures that are proposed that were described earlier in this document.

Although Northeast Gateway stated that the ensonified area of 120-dB isopleths by EBRV's decoupling would be less than 1 km^2 as measured in the Gulf of Mexico in 2005, due to the lack of more recent sound source verification and the lack of source measurement in Massachusetts Bay, NMFS uses a more conservative spreading model to calculate the 120 dB isopleth received sound level. This model was also used to establish the 120-dB zone of influence (ZOI) for the previous IHAs issued to Northeast Gateway. In the vicinity of the LNG Port, where the water depth is about 80 m (262 ft), the 120-dB radius is estimated to be 2.56 km (1.6 mi) maximum from the sound source during dynamic positioning for the container ship, making a maximum ZOI of 21 km^2 (8.1 mi^2). For shallow water depth (40 m or 131 ft) representative of the northern segment of the Algonquin Pipeline Lateral, the 120-dB radius is estimated to be 3.31 km (2.06 mi), the associated ZOI is 34 km^2 (13.1 mi^2).

The basis for Northeast Gateway and Algonquin's ''take'' estimate is the number of marine mammals that would be exposed to sound levels in excess of 120 dB, which is the threshold used by NMFS for continuous sounds. For the NEG port facility operations, the take estimates are determined by multiplying the area of the EBRV's ZOI (34 km^2) by local marine mammal density estimates, corrected to account for 50 percent more marine mammals that may be underwater, and then multiplying by the estimated LNG container ship visits per year. In the case of data gaps, a conservative approach was used to ensure the potential number of takes is not underestimated, as described next.

NMFS recognizes that baleen whale species other than North Atlantic right whales have been sighted in the project area from May to November. However, the occurrence and abundance of fin, humpback, and minke whales is not well documented within the project area. Nonetheless, NMFS uses the data on cetacean distribution within Massachusetts Bay, such as those published by the National Centers for Coastal Ocean Science (NCCOS, 2006), to estimate potential takes of marine mammals species in the vicinity of project area.

The NCCOS study used cetacean sightings from two sources: (1) The North Atlantic Right Whale Consortium (NARWC) sightings database held at the University of Rhode Island (Kenney, 2001); and (2) the Manomet Bird Observatory (MBO) database, held at NMFS Northeast Fisheries Science Center (NEFSC). The NARWC data contained survey efforts and sightings data from ship and aerial surveys and opportunistic sources between 1970 and 2005. The main data contributors included: Cetacean and Turtles Assessment Program (CETAP), Canadian Department of Fisheries and Oceans, PCCS, International Fund for Animal Welfare, NOAA's NEFSC, New England Aquarium, Woods Hole Oceanographic Institution, and the University of Rhode Island. A total of 653,725 km (406,293 mi) of survey track and 34,589 cetacean observations were provisionally selected for the NCCOS study in order to minimize bias from uneven allocation of survey effort in both time and space. The sightings-per-unit-effort (SPUE) was calculated for all cetacean species by month covering the southern Gulf of Maine study area, which also includes the project area (NCCOS, 2006).

The MBO's Cetacean and Seabird Assessment Program (CSAP) was contracted from 1980 to 1988 by NMFS NEFSC to provide an assessment of the relative abundance and distribution of cetaceans, seabirds, and marine turtles in the shelf waters of the northeastern United States (MBO, 1987). The CSAP program was designed to be completely compatible with NMFS NEFSC databases so that marine mammal data could be compared directly with fisheries data throughout the time series during which both types of information were gathered. A total of 5,210 km (8,383 mi) of survey distance and 636 cetacean observations from the MBO data were included in the NCCOS analysis. Combined valid survey effort for the NCCOS studies included 567,955 km (913,840 mi) of survey track for small cetaceans (dolphins and porpoises) and 658,935 km (1,060,226 mi) for large cetaceans (whales) in the southern Gulf of Maine. The NCCOS study then combined these two data sets by extracting cetacean sighting records, updating database field names to match the NARWC database, creating geometry to represent survey tracklines and applying a set of data selection criteria designed to minimize uncertainty and bias in the data used.

Owing to the comprehensiveness and total coverage of the NCCOS cetacean distribution and abundance study, NMFS calculated the estimated take number of marine mammals based on the most recent NCCOS report published in December 2006. A summary of seasonal cetacean distribution and abundance in the project area is provided above, in the ''Description of Marine Mammals in the Area of the Specified Activities'' section. For a detailed description and calculation of the cetacean abundance data and SPUE, please refer to the NCCOS study (NCCOS, 2006). These data show that the relative abundance of North Atlantic right, fin, humpback, minke, and pilot whales, and Atlantic white-sided dolphins for all seasons, as calculated by SPUE in number of animals per square kilometer, is 0.0082, 0.0097, 0.0265, 0.0059, 0.0407, and 0.1314 n/km, respectively.

In calculating the area density of these species from these linear density data, NMFS used 1.15 mi (1.85 km) as the strip width (W). This strip width is based on the distance of visibility used in the NARWC data that was part of the NCCOS (2006) study. However, those surveys used a strip transect instead of a line transect methodology. Therefore, in order to obtain a strip width, one must divide the visibility or transect value in half. Since the visibility value used in the NARWC data was 2.3 mi (3.7 km), it thus gives a strip width of 1.15 mi (1.85 km). Based on this information, the area density (D) of these species in the project area can be obtained by the following formula:

D = SPUE/2W.

Based on this calculation method, the estimated take numbers per year for North Atlantic right, fin, humpback, minke, and pilot whales, and Atlantic white-sided dolphins by the NEG Port facility operations, which is an average of 65 visits by LNG container ships to the project area per year (or approximately 1.25 visits per week), operating the vessels' thrusters for dynamic positioning before offloading natural gas, corrected for 50 percent underwater, are 5, 5, 15, 3, 23, and 73, respectively. These numbers represent maximum of 1.32, 0.24, 1.73, 0.10, 0.08, and 0.11 percent of the populations for these species, respectively. Since it is very likely that individual animals could be ''taken'' by harassment multiple times, these percentages are the upper boundary of the animal population that could be affected. Therefore, the actual number of individual animals being exposed or taken would be far less. There is no danger of injury, death, or hearing impairment from the exposure to these noise levels.

In addition, bottlenose dolphins, common dolphins, killer whales, Risso's dolphins, harbor porpoises, harbor seals, and gray seals could also be taken by Level B harassment as a result of deepwater LNG port operations. Since these species are less likely to occur in the area, and there are no density estimates specific to this particular area, NMFS based the take estimates on typical group size. Therefore, NMFS estimates that up to approximately 10 bottlenose dolphins, 20 common dolphins, 20 Risso's dolphins, 20 killer whales, 5 harbor porpoises, 15 harbor seals, and 15 gray seals could be exposed to continuous noise at or above 120 dB re 1 µPa rms incidental to operations during the one year period of the IHA, respectively.

Since Massachusetts Bay represents only a small fraction of the western North Atlantic basin where these animals occur NMFS has preliminarily determined that only small numbers of the affected marine mammal species or stocks would be potentially affected by the Northeast Gateway LNG deepwater project. The take estimates presented in this section of the document do not take into consideration the mitigation and monitoring measures that are proposed for inclusion in the IHA (if issued).

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of Northeast Gateway's proposed port operation activities, and none are proposed to be authorized by NMFS. Additionally, animals in the area are not anticipated to incur any hearing impairment (*i.e.*, TTS or PTS), as the modeling of source levels indicates that none of the source received levels exceed 180 dB (rms).

While some of the species occur in the proposed project area year-round, some species only occur in the area during certain seasons. Humpback and minke whales are not expected in the project area in the winter. During the winter, a large portion of the North Atlantic right whale population occurs in the southeastern U.S. calving grounds (*i.e.*, South Carolina, Georgia, and northern Florida). The fact that certain activities will occur during times when certain species are not commonly found in the area will help reduce the amount of Level B harassment for these species.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Operational activities are not anticipated to occur at the Port on consecutive days. In addition, Northeast Gateway EBRVs are expected to make 65 port calls throughout the year, with thruster use needed for a couple of hours. Therefore, Northeast Gateway will not be creating increased sound levels in the marine environment for prolonged periods of time.

Of the 13 marine mammal species likely to occur in the area, four are listed as endangered under the ESA: North Atlantic right, humpback, and fin whales. All of these species, as well as the northern coastal stock of bottlenose dolphin, are also considered depleted under the MMPA. There is currently no designated critical habitat or known reproductive areas for any of these species in or near the proposed project area. However, there are several well known North Atlantic right whale feeding grounds in the Cape Cod Bay and Great South Channel. No mortality or injury is expected to occur, and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

The population estimates for the species that may be taken by Level B behavioral harassment contained in the most recent U.S. Atlantic Stock Assessment Reports were provided earlier in this document. From the most conservative estimates of both marine mammal densities in the project area and the size of the 120-dB ZOI, the maximum calculated number of individual marine mammals for each species that could potentially be harassed annually is small relative to the overall population sizes (1.73 percent for humpback whales and 1.32 percent for North Atlantic right whales and no more than 1 percent of any other species).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the operation activities of the Northeast Gateway LNG Port will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from Northeast Gateway's proposed activities will have a

negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

On February 5, 2007, NMFS concluded consultation with MARAD and the USCG, under section 7 of the ESA, on the proposed construction and operation of the Northeast Gateway LNG facility and issued a biological opinion. The finding of that consultation was that the construction and operation of the Northeast Gateway LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales and Kemp's ridley, loggerhead, green or leatherback sea turtles. An incidental take statement (ITS) was issued following NMFS' issuance of the 2007 IHA.

On November 15, 2007, Northeast Gateway and Algonquin submitted a letter to NMFS requesting an extension for the LNG Port construction into December 2007. Upon reviewing Northeast Gateway's weekly marine mammal monitoring reports submitted under the previous IHA, NMFS recognized that the potential take of some marine mammals resulting from the LNG Port and Pipeline Lateral by Level B behavioral harassment likely had exceeded the original take estimates. Therefore, NMFS Northeast Region (NER) reinitiated consultation with MARAD and USCG on the construction and operation of the Northeast Gateway LNG facility. On November 30, 2007, NMFS NER issued a revised biological opinion, reflecting the revised construction time period and including a revised ITS. This revised biological opinion concluded that the construction and operation of the Northeast Gateway LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales.

NMFS' Permits, Conservation and Education division has preliminarily determined that the activities described in the proposed IHA are the same as those analyzed in the revised 2007 biological opinion. Therefore, a new consultation is not required for issuance of this IHA. If the IHA is issued, NMFS NER will need to issue a new ITS.

National Environmental Policy Act

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Northeast Gateway Port and Pipeline Lateral. A notice of availability was published by MARAD on October 26, 2006 (71 FR 62657). The Final EIS/EIR provides detailed information on the proposed project facilities, construction methods and analysis of potential impacts on marine mammals.

NMFS was a cooperating agency (as defined by the Council on Environmental Quality (40 CFR 1501.6)) in the preparation of the Draft and Final EISs. NMFS reviewed the Final EIS and adopted it on May 4, 2007. NMFS issued a separate Record of Decision for issuance of authorizations pursuant to section 101(a)(5) of the MMPA for the construction and operation of the Northeast Gateway's LNG Port Facility in Massachusetts Bay.

Dated: July 14, 2011.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–18320 Filed 7–20–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 140
Thursday, July 21, 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.

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting; African Development Foundation, Board of Directors Meeting

Time: Tuesday, August 2, 2011, 9 a.m. to 12 p.m.

Place: African Development Foundation, Conference Room, 1400 I Street, NW., Suite 1000, Washington, DC 20005.

Dates: Tuesday, August 2, 2011.

Status:

1. Open session, Tuesday, August 2, 2011, *9 a.m. to 11 a.m.;* and

2. Closed session, Tuesday, August 2, 2011, *11 p.m. to 12 p.m.*

Due to security requirements and limited seating, all individuals wishing to attend the open session of the meeting must notify Sarah Conway at (202) 233–8811 or *sconway@usadf.gov* of your request to attend by 5 p.m. on Thursday, July 28, 2011.

Lloyd O. Pierson,

President & CEO, USADF.

[FR Doc. 2011–18437 Filed 7–20–11; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0067]

Notice of Request for Extension of Approval of an Information Collection; Scrapie in Sheep and Goats; Interstate Movement Restrictions and Indemnity Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the interstate movement of sheep and goats and an indemnity program to control the spread of scrapie.

DATES: We will consider all comments that we receive on or before September 19, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0067-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0067, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0067* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on domestic regulations to control the spread of scrapie, contact Dr. Diane Sutton, Senior Staff Veterinarian, Ruminant Health Programs, NCAHP, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737; (301) 734–4913. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Scrapie in Sheep and Goats; Interstate Movement Restrictions and Indemnity Program.

OMB Number: 0579–0101.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal diseases and pests of livestock and to conduct programs to detect, control, and eradicate pests and diseases of livestock.

Scrapie is a progressive, degenerative, and eventually fatal disease affecting the nervous system of sheep and goats. Its control is complicated because the disease has an extremely long incubation period without clinical signs of disease and no known treatment.

APHIS regulations in 9 CFR part 79 restrict the interstate movement of certain sheep and goats to control the spread of scrapie, and 9 CFR part 54 contains regulations for an indemnity program, flock cleanup, testing, and a Scrapie Flock Certification Program (SFCP).

The scrapie disease control program information collection activities include cooperative agreements; grants; memorandums of understanding; APHIS forms for inspection and epidemiology data; applications to participate in the SFCP; flock plans; post-exposure management and monitoring plans; scrapie test records; applications for indemnity payments; certificates, permits, and owner statements for the interstate movement of certain sheep and goats; applications for premises identification numbers; and applications for official APHIS identification, along with other program-related activities.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.2158064 hours per response.

Respondents: Flock owners; market owners, operators, or managers; dealers; slaughter plant owners, operators, or managers; feedlot owners, operators, or managers; tag manufacturers; managers of producer organizations; accredited veterinarians; and State animal health authorities.

Estimated annual number of respondents: 112,000.

Estimated annual number of responses per respondent: 6.587625.

Estimated annual number of responses: 737,814.

Estimated total annual burden on respondents: 897,039 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC this 14th day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–18412 Filed 7–20–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0064]

Notice of Request for Extension of Approval of an Information Collection; Infectious Salmon Anemia; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the payment of indemnity due to infectious salmon anemia.

DATES: We will consider all comments that we receive on or before September 19, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0064-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0064, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0064* or in our reading Room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the payment of indemnity due to infectious salmon anemia, contact Dr. William G. Smith, Area Veterinarian in Charge, VS, APHIS, USDA, 160 Worcester-Providence Road, Sutton Square Plaza, Suite 20, Sutton, MA 01590–9998; (508) 363–2290. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Infectious Salmon Anemia; Payment of Indemnity.

OMB Number: 0579–0192.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized to prevent the interstate spread of serious diseases and pests of livestock within the United States and to eradicate such diseases and pests from the United States when feasible. In connection with this mission, APHIS established regulations in 9 CFR part 53 to pay indemnity to salmon producers in Maine whose fish are destroyed because of infectious salmon anemia (ISA).

ISA is a foreign animal disease of Atlantic salmon, caused by an orthomyxovirus. The disease affects both wild and farmed Atlantic salmon. ISA poses a substantial threat to the economic viability and sustainability of salmon aquaculture in the United States.

In order to take part in the indemnity program, producers must enroll in the cooperative ISA control program administered by APHIS and the State of Maine. Program participants must inform the ISA Program Veterinarian in writing of the name of their accredited veterinarian; develop biosecurity protocols and a site-specific ISA action plan; submit fish inventory and mortality information; assist APHIS or State officials with onsite disease surveillance, testing, and biosecurity audits; and complete an appraisal and indemnity claim form. Payment is subject to the availability of funding.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.97911 hours per response.

Respondents: ISA program participants, such as certain aquaculture industry business owners, managers, site employees, accredited veterinarians, or laboratory personnel.

Estimated annual number of respondents: 16.

Estimated annual number of responses per respondent: 44.875.

Estimated annual number of responses: 718.

Estimated total annual burden on respondents: 1,421 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual

number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–18413 Filed 7–20–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forestry Research Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forestry Research Advisory Council will meet in Washington DC August 16–17, 2011. The purpose of the meeting is to discuss emerging issues in forestry research.

DATES: The meeting will be held August 16–17, 2011. Meetings will be from 8:30 a.m. to 5 p.m, on both days.

ADDRESSES: The meeting will be held in Suite 5500W, Franklin Court Building, 1099 14th Street, NW., Washington, DC. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals by August 1, 2011 to Daina Apple, Designated Federal Officer, Forestry Research Advisory Council, USDA Forest Service Research and Development, 1400 Independence Ave., SW., Washington DC 20250–1120, or fax their names and proposed agenda items to (202) 205–1530.

FOR FURTHER INFORMATION CONTACT: Daina Apple, Forest Service Office of the Deputy Chief for Research and Development, (202) 205–1665.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service, National Institute of Food and Agriculture staff and Council members. However, persons who wish to bring forestry research matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

Dated: July 15, 2011.

Jimmy L. Reaves,

Deputy Chief, Research and Development.

[FR Doc. 2011–18388 Filed 7–20–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Saguache County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Saguache County Resource Advisory Committee will meet in Center, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to review and recommend project proposals to be funded with Title II money.

DATES: The meeting will be held on August 10, 2011 and will begin at 10 a.m.

ADDRESSES: The meeting will be held at the Baca Grande Property Owners Association building, 68575 County Road T, Crestone, Colorado. Written comments should be sent to Mike Blakeman, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144. Comments may also be sent via e-mail to *mblakeman@fs.fed.us,* or via facsimile to 719–852–6250.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144.

FOR FURTHER INFORMATION CONTACT: Mike Blakeman, RAC coordinator, USDA, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144; 719–852–6212; E-mail *mblakeman@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.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Update on status of funded projects; (2) Review, evaluate and recommend project proposals to be funded with Title II money; (3) Update on current status of Secure Rural Schools Act reauthorization and schedule the next meeting; and (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: July 13, 2011.

Dan S. Dallas,

Forest Supervisor.

[FR Doc. 2011–18327 Filed 7–20–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Sea Grant Program Application Requirements for Grants, for Sea Grant Fellowships, and for Designation as a Sea Grant College or Sea Grant Institute.

OMB Control Number: 0648–0362.

Form Number(s): NOAA 90–1, NOAA 90–2, NOAA 90–4.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 162.

Average Hours per Response: 30 minutes for a Sea Grant Control form; 20 minutes for a Project Record Form; 15 minutes for a Sea Grant Budget form; and 20 hours for an application for designation as a Sea Grant college or Sea Grant institute.

Burden Hours: 857.

Needs and Uses: This request is for extension of a current information collection.

The objectives of the National Sea Grant College Program, as stated in the Sea Grant legislation (33 U.S.C. 1121–1131) are to increase the understanding, assessments, development, utilization, and conservation of the Nation's ocean, coastal, and Great Lakes resources. It accomplishes these objectives by conducting research, education, and outreach programs.

Grant monies are available for funding activities that help obtain the objectives of the Sea Grant Program. Both single and multi-project grants are awarded, with the latter representing about 80 percent of the total grant program. In addition to other standard grant application requirements, three forms are required with the grants. These are the Sea Grant Control Form 90–2, used to identify the organizations and personnel who would be involved in the grant; the Project Record Form 90–1,

which collects summary data on projects; and the Sea Grant Budget Form 90–4, which provides information similar to, but more detailed than on, forms SF–424A or SF–424C.

The National Sea Grant College Program Act (33 U.S.C. 1126) provides for the designation of a public or private institution of higher education, institute, laboratory, or State or local agency as a Sea Grant college or Sea Grant institute. Applications are required for designation of Sea Grant Colleges and Sea Grant Institutes.

Affected Public: Not for profit institutions; business or other for-profit, individuals or households; state, local or tribal government.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: July 18, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–18389 Filed 7–20–11; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Weather Modification Activities Reports.

OMB Control Number: 0648–0025.

Form Number(s): NOAA Forms 1704ar1 and 1704r1.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 55.

Average Hours per Response: 30 minutes.

Burden Hours: 55.

Needs and Uses: This is an extension of a current information collection.

Section 6(b) of Public Law 92–205 requires that persons who engage in weather modification activities (*e.g.,* cloud seeding) provide reports prior to and after the activity. They are also required to maintain certain records. The requirements are detailed in 15 CFR part 908. NOAA uses the data for scientific research, historical statistics, international reports and other purposes.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; individuals or households; state, local or tribal government.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: July 18, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–18447 Filed 7–20–11; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Marine Fisheries Service (NMFS) Alaska Region Bering Sea and Aleutian Islands Crab Arbitration.

OMB Control Number: 0648–0516.

Form Number(s): NA.

Type of Request: Regular submission (request for revision and extension of current information collection).

Number of Respondents: 14.

Average Hours per Response: Combined annual arbitration organization notification and report, 5 hours; contract arbitrator report, 4 hours; combined shared arbitration accounting report, 20 hours.

Burden Hours: 78.

Needs and Uses: The Crab Rationalization Program allocates Bering Sea and Aleutian Islands (BSAI) crab resources among harvesters, processors, and coastal communities through a limited access system that balances the interests of these groups who depend on these fisheries. Program components include quota share allocation, processor quota share allocation, individual fishing quota and individual processing quota issuance, quota transfers, use caps, crab harvesting cooperatives, protections for Gulf of Alaska groundfish fisheries, arbitration system, monitoring, economic data collection, and cost recovery fee collection.

The Crab Rationalization Program Arbitration System is established by the contracts required pursuant to 50CF 680.20, including the process by which the Market Report and Non-Binding Price Formula are produced, as well as the negotiation approaches, the Binding Arbitration process, and fee collection.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: July 18, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–18405 Filed 7–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE 6/23/2011 THROUGH 7/14/2011

Firm name	Address	Date accepted for investigation	Products
Apex Industries, Inc.	3808 North Sullivan Road, Building 14, PO Box 15288, Spokane Valley, WA 99215.	07/11/2011	The firm manufactures computer enclosure parts using mainly cold-rolled steel, stainless steel and aluminum. It is a sheet metal fabrication and paint/powder coating company.
Dynalab Corp.	350 Commerce Drive, Rochester, NY 14623.	07/13/2011	The firm is a master distributor that sells plastic laboratory supplies and equipment to the scientific, education and industrial markets.
Genesis Metal Corporation	8255 Highway 16, Beggs, OK 74421–2892.	07/13/2011	The firm is a welding and fabrication company specializing in custom manufacturing of heat exchanger boilers, direct fired heaters, economizers and waste heat recovery.
Herbalix Restoratives, LLC	PO Box 65346, Port Ludlow, WA 98365.	07/13/2011	The firm manufactures natural body care products by distilling, heating, blending and forming all ingredients such as herbal essences, glycerin, and beeswax.
J.K. Adams Company, Inc.	1430 Route 30, Dorset, VT 05251.	07/11/2011	The firm is a secondary processor for hardwood lumber and manufactures over 100 proprietary products. Kiln dried planks are formed into panels to be molded, shaped and routed.
J.M. McConkey & Co., Inc.	1615 Puyallup Street, PO Box 1690, Sumner, WA 98390.	07/11/2011	The firm uses recycled polypropylene, PET, and styrene to create both injection molded and thermoformed containers and trays.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: July 14, 2011.

Sunni Massey,

Eligibility Certifier.

[FR Doc. 2011–18328 Filed 7–20–11; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1771]

Grant of Authority; Establishment of a Foreign-Trade Zone Under the Alternative Site Framework, Terrebonne Parish, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170–1173, 01/12/2009 (correction 74 FR 3987, 01/22/2009); 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Houma-Terrebonne Airport Commission (the Grantee) has made application to the Board (FTZ Docket 69–2010, filed 12/6/2010) requesting the establishment of a foreign-trade zone under the ASF with a service area of Terrebonne Parish, Louisiana, adjacent to the Morgan City Customs and Border Protection port of entry, and proposed Sites 1 and 2 would be categorized as magnet sites;

Whereas, notice inviting public comment has been given in the **Federal Register** (75 FR 77614–77615, 12/13/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records as Foreign-Trade Zone No. 279, as described in the

application, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to an ASF sunset provision for magnet sites that would terminate authority for Site 2 if not activated within five years from the date of approval.

Signed at Washington, DC, this 7th day of July 2011.

Gary Locke,

Secretary of Commerce, Chairman and Executive Officer, Foreign Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–18518 Filed 7–20–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Extension of Time Limit for Final Results of the Third Antidumping Duty Administrative Review

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

DATES: *Effective Date:* July 21, 2011.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Kathleen Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–9068 or (202) 482–7906, respectively.

Background

On May 28, 2010, Department of Commerce (''Department'') published the notice of the initiation of the antidumping duty administrative review on certain activated carbon from the People's Republic of China (''PRC''), covering the period April 1, 2009, through March 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 29976 (May 28, 2010) (''*Initiation Notice''*).

On October 6, 2010, the Department published a notice extending the time period for issuing the preliminary results by 120 days to April 30, 2011. *See Certain Activated Carbon From the People's Republic of China: Extension of Time Limits for Preliminary Results of the Third Antidumping Duty Administrative Review,* 75 FR 61697 (October 6, 2010). On April 29, 2011, the Department published the preliminary results of this review. *See Preliminary Results of the Third Antidumping Duty Administrative Review, and Preliminary Rescission in Part: Certain Activated Carbon from the People's Republic of China,* 75 FR 23978 (April 29, 2011) (''*Preliminary Results''*). The final results are currently due on August 27, 2011.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), requires the Department to issue the final results in an administrative review of an antidumping duty order 120 days after the date on which the preliminary results are published. The Department may, however, extend the deadline for completion of the final results of an administrative review to 180 days if it determines it is not practicable to complete the review within the foregoing time period. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

The Department requires additional time to complete this review because the Department must fully analyze and consider significant issues raised in the parties' case and rebuttal briefs. Additionally, the Department released information related to the wage rate calculation after publication of the *Preliminary Results* and has received additional comments which it must analyze and consider in addition to the case and rebuttal briefs. Thus, it is not practicable to complete this review within the time specified under the Act. Therefore, we are fully extending the time for the completion of the final results of this review by 60 days to October 26, 2011.

This notice is published in accordance with section 777(i)(1) of the Act.

Dated: July 15, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–18455 Filed 7–20–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Executive Business Development Mission

AGENCY: International Trade Administration.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing a Renewable Energy and Energy Efficiency Trade Mission to Turkey on December 4–10, 2011. Led by a senior Department of Commerce official, the mission will include representatives from a variety of U.S. firms specializing in the following product areas:

- Wind Turbines;
- Geothermal Exploration, Drilling and Geophysical Engineering Services;
- Geothermal Power Plant Equipment;
- Biomass Power Generation;
- Hydroelectric Power Plant Equipment Supply;
- Solar Power Generation Systems;
- Cogeneration Systems;
- Energy Efficiency Systems and Solutions;
- Fuel Cells, Heat Pumps Exc.

Mission participants will be introduced to international agents, distributors, and end-users whose capabilities and services are targeted to each participant's needs. This mission will contribute to the National Export Initiative and the Renewable Energy and Energy Efficiency Export Initiative goals through increased sales of U.S. equipment/services in Turkey. The participants will also have a site visit to the Izmir Ataturk Organized Industrial Zone, targeted by the U.S. Department of Energy for a Near-Zero Zone Project (NZZ) to promote industrial energy efficiency and potential U.S. export opportunities. The U.S. Department of Energy (DOE), in coordination with other U.S. agencies, is launching the Near-Zero Zone project. This interagency project has the support of the Turkish government and business organizations, and will help industrial companies operating within the Izmir Ataturk Organized Industrial Zone (IAOSB) reduce their energy usage through a series of cost-effective efficiency upgrades.

One-on-one meetings with NZZ industrial participants will also be included, to follow quickly on an energy efficiency survey to be completed in September 2011. This mission will be an important deliverable for our bilateral Framework for Strategic Economic and Commercial Cooperation mechanism, a new process of engagement with the government of Turkey on economic and trade issues, chaired by Secretary Locke and U.S. Trade Representative, Ron Kirk.

Participants will have an opportunity to meet with major buyers, and potential

agents and distributors operating in Ankara, Istanbul, and Izmir, Turkey. The U.S. and Foreign Commercial Service is targeting a minimum of 15 and a maximum of 20 U.S. companies.

Commercial Setting

Turkey is a country offering significant opportunities for foreign investors and exporters with its geographically favorable position to function as a gateway between Europe, the Middle East and Central Asia. Opportunities exist not only in the dynamic domestic market in Turkey, but also throughout the region.

Hospitality and tolerance being the traditional cornerstones of the Turkish way of life, the country is open to foreign firms. Foreign Direct Investment (FDI) in Turkey slowed to $7.9 billion in 2009 during the height of the world economic crisis, but has reached $20 billion in previous years. There are approximately 24,000 companies with foreign capital in Turkey. Corporate income tax is only 20%, dividends can be transferred, foreign capital companies enjoy the same rights as local companies, international arbitration is possible, and expatriates can be employed.

A treaty between the U.S. and Turkey exists for the protection of foreign investments and another treaty between the U.S. and Turkey exists for the avoidance of double taxation. Turkey has a customs union agreement with the EU that covers trade in all goods, except agriculture goods: the export and import of these industrial goods from the EU have a zero percent customs duty. Turkey has agreed to implement most EU Directives regarding the safety of products and recognizes the CE certification of those types of products.

As announced by the International Monetary Fund, Turkey has the 16th largest economy in the world. In 2010, Turkey's GDP reached $958.3 billion. Turkey has a young, dynamic, well-educated and multi-cultural population of 73 million, the second largest population after Germany in Europe. Sixty percent of the population is under the age of 35.

Turkish imports in 2010 are estimated at $166 billion and Turkish exports about $114 billion for the same period (2010 official results are not announced yet). U.S. exports to Turkey in 2010 will exceed $10 billion and Turkish exports to the U.S. over $4 billion. Total U.S. FDI in Turkey is over $7 billion, a conservative figure given investment by European subsidiaries of U.S. parent corporations.

Turkey is strategically located. Turkey is often referred to as 'The Energy Bridge between East and West'. Seventy-three percent of the world's proven oil reserves and seventy-two percent of the world's proven gas reserves are located in the surrounding regions of Turkey: the Middle East, Caspian Region and Russia. This makes Turkey a crucial bridge between energy rich regions and Europe, which spends approximately $300 billion annually for imported energy resources.

Turkey is a manufacturing center with ambitions to become a regional energy hub. The international image of Turkey in terms of a destination for investment is generally shaped by the diverse market opportunities—both domestic and export-oriented—that Turkey offers. The potential of these markets covers over one billion consumers, including a large and growing domestic market (approx. 72 million people); high-income European markets (600 million people); emerging Russian, Caucasian and Central Asian markets (250 million people); and the expanding Middle East and North Africa markets (160 million people). These markets have approximately $25 trillion in combined GDP.

Turkey emerged from the world economic crisis much better than expected. The banking sector was strong and did not suffer any major crisis. Turkey's economy grew by 7–8% in 2010 and unlike the general trend; this was not a jobless recovery. Throughout the crisis Turkey was the only country whose credit rating was upgraded by two grades. Credit rating agencies and financial markets praised the strong performance and healthy state of the Turkish economy and demonstrated confidence in Turkey's economic policies.

In the 2010—2014 Energy Strategy Paper announced recently by the Turkish Minister of Energy and Natural Resources (MENR) Taner Yildiz, Turkey plans to have 20,000 MW of wind energy and 600 MW of geothermal energy capacity by 2023 (100th year anniversary of the Turkish Republic). Turkey plans to have 5,000 MW new hydroelectric power plants, 10,000 MW wind power farms, 300 MW geothermal power plants come into operation by 2015. As part of the energy efficiency programs, the Turkish government plans to decrease the primary energy intensity by 10% before 2015 and 20% before 2023.

Turkey ranks No.1 in Europe and No. 7 in the world in terms of geothermal power potential. Power generation from biomass will become more important as large municipalities are considering more efficient methods of disposing of municipal waste. After Spain, Turkey has the second largest potential for solar power development in Europe.

Turkey also has large hydroelectric potential. Currently 30% of Turkey's installed capacity is from hydroelectric resources. Many Turkish private companies are investing in run of river type of electromechanical equipment which is mostly supplied from China, Austria, Norway and Germany. The US&FCS Turkey receives a considerable amount of inquiries from Turkish companies, asking for hydro electromechanical equipment from the U.S. with U.S. Ex-Im Bank financing.

The Government of Turkey has adopted a new legal framework to increase the feed-in tariff for the electricity to be delivered from different types of renewable energy resources. Over the next five years, Turkey's investments on renewable energy are estimated to expand to $20 billion.

U.S.-Turkish relations focus on areas such as strategic energy cooperation, trade and investment, security ties, regional stability, counterterrorism, and human rights progress. President Barack Obama paid a historic visit to Turkey on April 5–7, 2009, as the first bilateral visit of his presidency. During the visit, he spoke before the Turkish Parliament and outlined his vision of a model U.S.-Turkish partnership based on mutual interests and mutual respect. The inaugural Framework for Strategic Economic and Commercial Cooperation meeting was held in Washington, DC in October 2010. In addition to the new framework, the U.S. and Turkey hold annual meetings of the Trade and Investment Framework Agreement (TIFA) Council, which met in Washington, DC in July 2010, and Economic Partnership Commission (EPC), which last convened in Turkey in June 2010.

On May 14, 2010, Under Secretary of Commerce for International Trade, Francisco Sánchez and Undersecretary for Foreign Trade of Turkey Ahmet Yakici signed the Terms of Reference for the establishment of a newly formed U.S.-Turkey Business Council (Council). The Council will bring together U.S. and Turkish business leaders to provide policy recommendations to both governments jointly on ways to strengthen bilateral economic relations.

Mission Goals

The trade mission will assist representatives of U.S. companies in the Renewable Energy and energy efficiency industries responsible for business activity in Europe, Caucasus and Central Asia, the Middle East and North Africa markets with their efforts to identify profitable opportunities and new

markets for their respective U.S. companies and to increase their export potential in joint cooperation with Turkish companies.

Mission Scenario

In Turkey, mission members will also be presented with a briefing by the U.S. Embassy Country Team, the Commercial Specialist for the renewable energy sector and other key government and corporate officials. Participants will take part in business matchmaking appointments with Turkish private sector companies, which may be potential candidates for agent/representative or distributors. The trade mission will visit: Ankara, the capital of Turkey, a growing industrial base and the seat of government; Istanbul, where headquarters of most private sector companies are located; and Izmir, Turkey's third largest city with strong renewable energy and energy efficiency potential.

U.S. participants will be counseled before and after the mission by the domestic mission coordinator. Participation in the mission will include the following:

- Pre-travel webinars on subjects ranging from industry briefings to business practices in Turkey;
- Pre-scheduled meetings with potential partners, distributors, end users, or local industry contacts;
- Transportation to all mission-organized meetings inside the cities (all air transportation within Turkey is the responsibility of the mission participant);
- Meetings with key government decision makers and private sector firms;
- Participation in networking receptions in Turkey; and
- Meetings with CS Turkey's energy specialists in Ankara, Istanbul and Izmir, Turkey.

Mission Timetable

Mission participants will arrive in Ankara on December 4, 2011 and the mission program will take place from December 5–9, 2011. Departure to the United States or other onward destinations will be on December 10, 2011.

Sunday, Dec. 4, 2011 ..... Ankara, Turkey.	• Arrival in Ankara, Turkey.
Day 1	• Wreath laying at the Ataturk's Mausoleum (Anitkabir) (optional).
Monday, Dec. 5, 2011	• Agenda review and market briefings by U.S. mission officials.
Ankara, Turkey	• Meeting with Minister of Energy and Natural Resources or designate. • Meeting with State Minister for Foreign Trade or designate. • Briefing by Ministry of Energy, Regulator EMRA and EIE. • Networking reception.
Day 2	• Morning 1–1 matchmaking meetings.
Tuesday, Dec. 6, 2011	• Afternoon departure to Istanbul.
Ankara—Istanbul, Turkey	• Evening Bosporus Cruise (working reception and dinner with American and Turkish business communities).
Day 3	• Morning meeting with the Mayor of Istanbul or designate and site visit to waste to energy facilities (optional).
Wednesday, Dec. 7, 2011	• Afternoon 1–1 matchmaking meetings.
Izmir, Turkey	• Evening departure to Izmir.
Day 4	• Morning 1–1 matchmaking meetings.
Thursday, Dec. 8, 2011	• Afternoon site visit to wind farms in Cesme (optional).
Izmir, Turkey	• Evening networking reception.
Day 5	• Site visit to Ataturk Industrial Zone for U.S. DOE led ''Near Zero Zone'' Energy Efficiency Project (optional).
Friday, Dec. 9, 2011	• 1–1 matchmaking meetings.
Izmir, Turkey	• Wrap-up session.
Day 6 ..... Saturday, Dec. 10, 2011. Izmir, Turkey.	• Departure to the U.S. (same day arrival in U.S.).

Participation Requirements

All parties interested in participating in the Commercial Service Trade Mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 companies and a maximum of 20 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business with Turkey as well as U.S. companies seeking to enter to the Turkish market for the first time may apply.

Expenses:

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $4,055 for large firms and $3,285 for a small or medium-sized enterprise (SME)* or small organization, which will cover one representative.

The fee for each additional firm representative (large firm or SME) is $500.

Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant. Delegation members will be able to take advantage of U.S. Mission discounted rates for hotel rooms.

Conditions for Participation:

- An applicant must submit in a timely manner a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation: Selection will be based on the following criteria:

- Suitability of the company's products or services to the market.
- Applicant's potential for business in Turkey and in the region, including likelihood of exports resulting from the mission.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including posting on the Commerce Department trade missions calendar—*http://www.trade.gov/trade-missions*—and other Internet websites, publication in domestic trade publications and association newsletters, direct outreach to internal clients and distribution lists, posting in the **Federal Register**, and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than October 17, 2011. The U.S. Department of Commerce will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after the deadline. Applications received after this date will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT:

U.S. Commercial Service Ankara, Turkey

Serdar Cetinkaya, Senior Commercial Specialist, U.S. Embassy—Ankara, *Tel:* +90 (312) 457–7278 or 457–7203, *Fax:* +90 (312) 457–7302, *E-mail: Serdar.Cetinkaya@trade.gov.*

U.S. Commercial Service Bakersfield, California

Glen Roberts, Director, U.S. Export Assistance Center Bakersfield, *Tel:* 661–637–0136, *Fax:* 661–637–0156, *E-mail: Glen.Roberts@trade.gov.*

Elnora Moye,

Commercial Service Trade Mission Program, U.S. Department of Commerce.

[FR Doc. 2011–18360 Filed 7–20–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Project 25 Compliance Assessment Program Laboratory Application for Assessment and Recognition

AGENCY: National Institute of Standards and Technology (NIST).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 19, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dereck Orr, Program Manager for Public Safety Communications, NIST's Office of Law Enforcement Standards, Building 1, Room 2209, Boulder, CO 80305; 303–497–5400 (or via the Internet at *dereck.orr@nist.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The September 11 attacks and Hurricane Katrina made apparent the need for public safety radio systems to interoperate, regardless of who manufactured the equipment. In response, and per Congressional direction, the National Institute of Standards and Technology (NIST) and the Department of Homeland Security (DHS) developed the Project 25 Compliance Assessment Program (P25 CAP) to improve public safety confidence in purchasing land mobile radio (LMR) equipment built to Project 25 LMR (P25) standards. Especially those P25 standards related to improving interoperability between different manufacturer's radio systems. The NIST/DHS P25 CAP is the system that will improve the conformance, performance and interoperability of LMR used by public safety personnel. The P25 CAP is a voluntary system that provides a mechanism for the recognition of testing laboratories based on internationally accepted standards. It identifies competent laboratories through assessments by trained Laboratory Assessment Teams and promotes the acceptance of compliant test results from these laboratories. Information collected through this process is to establish the suitability of applying laboratories, confirm equipment as meeting P25 standards, and gather basic business information.

II. Method of Collection

The application is available on the DHS SAFECOM program Web site (*http://www.safecomprogram.gov/NR/rdonlyres/0E12BFA9-B541-4CD6-83CC-66EDED0CCB73/0/P25CAPLaboratoryApplication.pdf*) in Adobe PDF format. The form can be completed on-line or by hand and submitted via facsimile, e-mail, or mail to the designated official listed on the application.

III. Data

OMB Control Number: 0693–0053.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations; not-for-profit institutions; Federal government; and state, local, or tribal government.

Estimated Number of Respondents: 10.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 10 hours.

Estimated Total Annual Cost to Public: $50.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 15, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–18362 Filed 7–20–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA540

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Cost Recovery Program

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

ACTION: Notification of fee percentage.

SUMMARY: NMFS publishes a notification of a 1.23-percent fee for cost recovery under the Bering Sea and Aleutian Islands Crab Rationalization Program. This action is intended to provide holders of crab allocations with the fee percentage for the 2011/2012 crab fishing year so they can calculate the required payment for cost recovery fees that must be submitted by July 31, 2012.

DATES: The Crab Rationalization Program Registered Crab Receiver permit holder is responsible for submitting the fee liability payment to NMFS on or before July 31, 2012.

FOR FURTHER INFORMATION CONTACT: Gabrielle Aberle or Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the Bering Sea and Aleutian Islands Crab Rationalization Program (Program) in the North Pacific. Fishing under the Program began on August 15, 2005. Regulations implementing the Program can be found at 50 CFR part 680.

The Program is a limited access system authorized by section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Program includes a cost recovery provision to collect fees to recover the actual costs directly related to the management, data collection, and enforcement of the Program. NMFS developed the cost recovery provision to conform to statutory requirements and to partially reimburse the agency for the actual costs directly related to the management, data collection, and enforcement of the Program. Section 313(j) of the Magnuson-Stevens Act provided supplementary authority to section 304(d)(2)(A) and additional detail for cost recovery provisions specific to the Program. The cost recovery provision allows collection of 133 percent of the actual management, data collection, and enforcement costs up to 3 percent of the ex-vessel value of crab harvested under the Program. Additionally, section 313(j) requires the harvesting and processing sectors to each pay half the cost recovery fees. Catcher/processor quota share holders are required to pay the full fee percentage for crab processed at sea.

A crab allocation holder generally incurs a cost recovery fee liability for every pound of crab landed. The crab allocations include Individual Fishing Quota, Crew Individual Fishing Quota, Individual Processing Quota, Community Development Quota, and the Adak community allocation. The Registered Crab Receiver (RCR) permit holder must collect the fee liability from the crab allocation holder who is landing crab. Additionally, the RCR permit holder must collect his or her own fee liability for all crab delivered to the RCR. The RCR permit holder is responsible for submitting this payment to NMFS on or before the due date of July 31, in the year following the crab fishing year in which landings of crab were made.

The dollar amount of the fee due is determined by multiplying the fee percentage (not to exceed three percent) by the ex-vessel value of crab debited from the allocation. Specific details on the Program's cost recovery provision may be found in the implementing regulations at 50 CFR 680.44.

Fee Percentage

Each year, NMFS calculates and publishes in the **Federal Register** the fee percentage according to the factors and methodology described in Federal regulations at § 680.44(c)(2). The formula for determining the fee percentage is the ''direct program costs'' divided by ''value of the fishery,'' where ''direct program costs'' are the direct program costs for the Program for the previous fiscal year, and ''value of the fishery'' is the ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year. Fee collections for any given year may be less than, or greater than, the actual costs and fishery value for that year, because, by regulation, the fee percentage is established in the first quarter of a crab fishery year based on the fishery value and the costs of the prior year.

Using this fee percentage formula, the estimated percentage of costs to value for the 2010/2011 fishery was 1.23 percent. Therefore, the fee percentage will be 1.23 percent for the 2011/2012 crab fishing year.

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

Dated: July 18, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–18456 Filed 7–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Marine Protected Areas Federal Advisory Committee; Public Meetings

AGENCY: Department of Commerce, National Ocean Service, (NOAA).

ACTION: Notice of open meetings.

SUMMARY: Notice is hereby given of two meetings via web conference call of the Marine Protected Areas Federal Advisory Committee (Committee). The web conference calls are open to the public, and participants can dial in to the calls. Participants who choose to use the web conferencing feature in addition to the audio will be able to view the presentations as they are being given. Members of the public wishing to listen in should contact Denise Ellis-Hibbett at the email or telephone number below for the call-in number and passcode.

DATES: The meetings will be held on Tuesday, August 16, 2011, from 1 to 3 p.m. E.S.T., and on Tuesday, August 23, from 2 to 4 p.m. E.S.T. These times and the matters to be considered described below are subject to change. Please refer to the web page listed below for the most up-to-date meeting agenda and supporting materials.

ADDRESSES: The meetings will be held via web conference calls.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, Acting Designated

Federal Officer, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland 20910. (*Phone:* 301–713–3100 x136, *Fax:* 301–713–3110); *e-mail: lauren.wenzel@noaa.gov;* or Denise Ellis-Hibbett (Phone: 301–713–3100 x195; *e-mail: denise.ellis-hibbett@noaa.gov;* or visit the National MPA Center Web site at *http://www.mpa.gov*).

SUPPLEMENTARY INFORMATION: The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretary of Commerce and the Secretary of the Interior on implementation of Section 4 of Executive Order 13158 on marine protected areas.

Matters To Be Considered: The Committee will discuss and vote on recommendations on the linkages between marine protected areas and Coastal and Marine Spatial Planning. The focus of the first meeting will be to discuss the issues in the draft recommendations developed by the Coastal and Marine Spatial Planning Subcommittee for the Committee's review and action. The focus of the second meeting will be to vote on the same recommendations. Committee materials for the conference call will be posted at *http://www.mpa.gov.*

Dated: July 13, 2011

Donna Wieting,

Acting Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic Atmospheric Administration.

[FR Doc. 2011–18325 Filed 7–20–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 76, No. 136, Friday, July 15, 2011, page 41769.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Open to Public—2–3 p.m.

CHANGES TO MEETINGS: For Meeting Open to the Public, 10 a.m.–12 p.m., Matters to be Discussed:

(1) Hearing—Agenda and Priorities for Fiscal Year 2013 Budget—10–11 a.m.;

(2) Decisional Matter: ASTM F963 Notice of Requirements—11 a.m.–12 p.m.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: July 19, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–18535 Filed 7–19–11; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, July 27, 2011, 10–11 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public

MATTERS TO BE CONSIDERED:

Decisional Matters: 1. Phthalates Enforcement Policy; 2. Phthalates Notice of Requirements.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: July 19, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–18634 Filed 7–19–11; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, July 27, 2011; 11 a.m.–12 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: July 19, 2011.

Todd A Stevenson,

Secretary.

[FR Doc. 2011–18635 Filed 7–19–11; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–28]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–28 with attached transmittal, and policy justification.

Dated: July 14, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUL 12 2011

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-28, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to The Government of Thailand for defense articles and services estimated to cost $235 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 11-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Thailand

(ii) Total Estimated Value:

Major Defense Equipment*	$ 110 million
Other	$ 125 million
TOTAL	$ 235 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 3 UH-60M Black Hawk Helicopters, 8 T700-GE-701D Engines (6 installed and 2 spares), Dual MXF-4027 VHF/UHF-AM/FM communication radios, AN/ARC-201E Export SINCGARS Airborne Radio, AN/AXP-117 CXP (Common Digital IFF Transponder), government furnished equipment, engineering change proposals, spare and repair parts, support equipment, publications and technical documentation, Aviation Mission Planning Station, Transportable Blackhawk Operations Simulator (TBOS), U.S. Government and contractor technical and logistics support services, aircraft warranty, Air Worthiness Release Support, Repair and Return Support, and other related elements of logistics support.

(iv) Military Department: Army (UAD)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: 12 July 2011

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Thailand – UH-60M Blackhawk Helicopters

The Government of Thailand has requested a possible sale of 3 UH-60M Black Hawk Helicopters, 8 T700-GE-701D Engines (6 installed and 2 spares), Dual MXF-4027 VHF/UHF-AM/FM communication radios, AN/ARC-201E Export SINCGARS Airborne Radio, AN/AXP-117 CXP (Common Digital IFF Transponder), government furnished equipment, engineering change proposals, spare and repair parts, support equipment, publications and technical documentation, Aviation Mission Planning Station, Transportable Blackhawk Operations Simulator (TBOS), U.S. Government and contractor technical and logistics support services, aircraft warranty, Air Worthiness Release Support, Repair and Return Support, and other related elements of logistics support. The estimated cost is $235 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a major non-NATO ally.

The Government of Thailand intends to use these defense articles and services to modernize its armed forces. This proposed sale will contribute to the Thais military's goal to update its capability while further enhancing greater interoperability among the Government of Thailand, the U.S., and other allies.

The proposed sale of these helicopters and support package will not alter the basic military balance in the region.

The prime contractors will be Sikorsky Aircraft Company in Stratford, Connecticut; and General Electric Aircraft Company in Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the U.S. Government or contractor representatives to travel to Thailand for 5 weeks for equipment de-processing/fielding, system checkout and new equipment training and a Contractor Furnished Service Representative for one year.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–18399 Filed 7–20–11; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–15]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–15 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUN 24 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-15, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to India for defense articles and services estimated to cost $86 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 11–15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* India

(ii) *Total Estimated Value:*

Major Defense Equipment *	$38 million
Other	$48 million
TOTAL	$86 million

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 32 MK–54 All-Up-Round Lightweight Torpedoes, 3 recoverable exercise torpedoes, 1 training shape, containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, transportation, U.S. Government and contractor representatives' technical assistance, engineering and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Navy (AAR)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:*

POLICY JUSTIFICATION

India—MK–54 Lightweight Torpedoes

The Government of India has requested a possible sale of 32 MK–54 All-Up-Round Lightweight Torpedoes, 3 recoverable exercise torpedoes, 1 training shape, containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, transportation, U.S. Government and contractor representatives' technical assistance,

engineering and logistics support services, and other related elements of logistics support. The estimated cost is $86 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to strengthen the U.S.-India strategic relationship and to improve the security of a key important partner which continues to be an important force for political stability, peace, and economic progress in South Asia.

India intends to use the torpedoes on its Indian Navy P–8I Neptune maritime patrol aircraft, which will provide enhanced capabilities in effective defense of critical sea lines of communication.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be The Boeing Company in St. Louis, Missouri, and a yet to be identified U.S. torpedo contractor. Details of a potential offset agreement in connection with the proposed sale are not known as of the date of this transmittal.

Implementation of this proposed sale will require U.S. Government and contractor representative in-country visits on a temporary basis for technical reviews, support, and oversight.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 11–15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act (U)

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The MK–54 is a conventional torpedo that can be launched from surface ships, helicopters, and fixed wing aircraft. The MK–54 is an upgrade to the MK–46 torpedo. The upgrade to MK–54 entails replacement of the torpedo's sonar and guidance and control systems with modern technology. The new guidance and control system uses a mixture of commercial-off-the-shelf and custom-built electronics. The warhead, fuel tank and propulsion system from the MK–46 torpedo are re-used in the MK–54 configuration with minor modifications. The MK–54 is highly effective against modern diesel and nuclear submarines. It has advanced logic that allows it to detect and prosecute threat submarines operating in challenging littoral environments. It is also effective in the presence of advanced acoustic countermeasures that may be deployed by threat submarines.

2. The assembled MK–54 torpedo and several of its individual components are classified Confidential. The MK–54 operational software is classified Secret as is any hardware upon which the software has been installed.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2011–18398 Filed 7–20–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Announcement of Federal Funding Opportunity (FFO)

AGENCY: Office of Economic Adjustment (OEA), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: This notice announces a one-time opportunity to obtain funding from the Office of Economic Adjustment (OEA) for construction of Transportation Infrastructure Improvements associated with medical facilities related to recommendations of the 2005 Defense Base Closure and Realignment Commission. This notice includes proposal requirements, the deadline for submitting proposals, and the criteria that will be used to select proposals. However, because this is a new one-time program, this notice also requests comments on the proposed selection criteria for these grants, as provided in Section V, paragraph 1, of this notice. OEA will consider and respond to comments in a **Federal Register** supplemental notice on or about September 9, 2011, which may revise some elements of this notice. Awards may be provided under this notice directly by OEA to a state or local governmental entity, or funds may be transferred to another Federal agency for award on behalf of a state or local government.

DATES: A pre-proposal teleconference will be held on Tuesday, August 9, 2011, at 3 p.m. EDT to review the goals and objectives of this funding opportunity and answer questions from interested respondents. Comments on the proposal selection criteria provided in Section V, paragraph 1 of this notice must be received by OEA not later than August 19, 2011. All such comments must be in writing. OEA will publish a supplementary notice in the **Federal Register** on or about September 9, 2011, addressing comments received. Complete proposals for Transportation Infrastructure Improvement construction grants must be received by OEA by October 7, 2011 (the ''Proposal Deadline''). OEA will evaluate all proposals and announce the projects that have been selected for submission of a grant application within 30 days after the Proposal Deadline.

ADDRESSES: Comments on the proposal selection criteria must be submitted separately from proposals. Comments and proposals must be submitted by their respective due dates identified in the **DATES** section and must be submitted electronically to OEA by the following method:

E-mail: FFOsubmit@wso.whs.mil. Include either ''Transportation Infrastructure Comments'' or ''Transportation Infrastructure Proposal'' on the subject line of the message and request confirmation that your submission was received. OEA is not responsible for submissions unless OEA confirms receipt.

For the teleconference number and passcode for the teleconference on August 9, interested respondents should contact OEA at (703) 604–6020 or *david.witschi@wso.whs.mil.*

FOR FURTHER INFORMATION CONTACT: David F. Witschi, Associate Director, OEA, *telephone:* (703) 604–6020, *e-mail: david.witschi@wso.whs.mil. mailto:david.larson@wso.whs.mil*

SUPPLEMENTARY INFORMATION:

Federal Funding Opportunity Title: Transportation Infrastructure Improvements associated with medical facilities related to recommendations of the 2005 Defense Base Closure and Realignment Commission.

Announcement Type: Federal Funding Opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 12.600.

I. Funding Opportunity Description

OEA, a DoD Field Activity, is authorized by Section 8110 of Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, to provide up to $300 million ''for transportation infrastructure improvements associated with medical facilities related to recommendations of the Defense Base Closure and Realignment Commission.''

II. Award Information

OEA is accepting proposals for grant awards for construction of

Transportation Infrastructure Improvements associated with medical facilities related to recommendations of the 2005 Defense Base Closure and Realignment Commission. Proposals will be evaluated by a panel against the selection criteria provided in Section V, paragraph 1 of this notice. These criteria may be further amended and the deadline for submission of proposals may be extended by OEA in a supplementary notice to be published in the **Federal Register** on or about September 9, 2011. OEA expects to invite successful respondents to complete full applications for funding following its determination of eligible respondents and review of proposals. To receive an award, an eligible respondent must submit both a successful proposal and an acceptable grant application. Individual proposals exceeding $100 million will be accepted for review, however, OEA encourages applicants to submit multiple smaller projects, provided each such project will result in complete and useful project. The final amount of each award will be determined by OEA based on the recommendation of the evaluation panel, subject to the availability of funds under this announcement. Awards may pay for up to 100 percent of a construction project's cost and may supplement, but cannot supplant, other available fund sources. The total amount of funds available for awards may be reduced by amounts required to reimburse costs for program oversight and administrative services secured from non-DoD Federal agencies. Project cost overruns are the responsibility of the recipient. OEA reserves the right to cancel an award for non-performance. Funds recovered, or unneeded after a project is completed, may be made available for other projects. Awards are subject to compliance with the National Environmental Policy Act (NEPA), and applicants are responsible for providing the information required to satisfy NEPA and the Council on Environmental Quality NEPA regulations.

III. Eligibility Information

States, local governments, transit agencies, transit authorities, and political subdivisions of State or local governments are eligible to apply for these funds.

For the purposes of this funding, DoD has determined that patient access to medical care is the most important need to be addressed. To be considered, a construction project must address a transportation issue associated with a medical facility at an installation identified as a receiving location for patient care functions in a 2005 Defense Base Closure and Realignment Commission recommendation.

Eligible projects must be designed to construct real property improvements that can include, but are not limited to, highway or road projects, mass transit, pedestrian access, bicycle access, and any other types of public transportation infrastructure related to a recommendation of the 2005 Defense Base Closure and Realignment Commission. Eligible activities include, but are not limited to, project administration, preliminary and final engineering and design, inspection, environmental compliance, land acquisition, construction, utilities, and contingency costs required to implement the project.

Proposals submitted by eligible applicants that meet the aforementioned threshold condition will be ranked by a panel against the selection criteria provided in Section V, paragraph 1 of this notice. The highest ranking proposals will be invited to submit formal applications, and grant awards will be made to successful applicants until the available funds are exhausted.

IV. Application and Submission Information

Each interested respondent must submit a complete proposal not later than the Proposal Deadline date (see **DATES** and **ADDRESSES**). A proposal may not exceed 20 pages (single-sided, and including all maps, drawings and attachments) and shall include the following information:

A. *Point of Contact:* Name, phone number, e-mail address, and organization address of the respondent's primary point of contact;

B. *Existing or Projected Transportation Infrastructure Issue:* A summary of the transportation issue the proposed construction project will address, including how the transportation issue impedes the provision of care, *i.e.,* the military medical mission at a medical facility at an installation identified as a receiving location for patient care functions in a 2005 Defense Base Closure and Realignment Commission recommendation, expressed in terms of accepted and appropriate transportation planning and assessment techniques;

C. *Project Description:* A description of the proposed transportation infrastructure construction project, including an explanation how the project addresses the transportation issue;

D. *Project Engineering Information:* A demonstration of the technical feasibility of the construction project;

E. *Project Parties:* Identification of other parties involved in the project;

F. *Grant Funds and other Sources of Funds:* An overview of all funding sources, including the funds requested under this notice and financial commitments for other Federal and non-Federal funds needed to complete the project, and documentation demonstrating that the requested funds do not supplant other available funds;

G. *Uses of Construction Project Funds:* The uses of project funding, including a total project cost estimate with major cost elements broken out for project administration, preliminary and final engineering and design, inspection, environmental compliance, land acquisition, construction, utilities, and contingency;

H. *Project Schedule:* A sufficiently detailed project schedule, including milestones such as preliminary/final design, environmental compliance, land acquisition if needed, and construction, demonstrating that the project can be designed and begin construction quickly upon receipt of a grant and that the grant funds will be spent steadily and expeditiously once the project commences;

I. *Environmental Approvals:* Indicate the status (*e.g.,* receipt or reasonably anticipated receipt) of all environmental approvals necessary for the construction project to proceed to construction on the timeline specified in the project schedule, including all Federal, State, and local requirements, and completion of an appropriate environmental impact analysis in accordance with NEPA;

J. *State and Local Planning:* The inclusion of the construction project in the relevant State, metropolitan, and local planning documents, or a certification from the appropriate agency (*e.g.,* Metropolitan Planning Organization) that the project will be included in the relevant planning document;

K. *Grants Management:* Evidence of the intended recipient's ability and authority to manage grants;

L. *Submitting Official:* Documentation that the Submitting Official is authorized by the applicant to submit a proposal and subsequently apply for assistance.

OEA reserves the right to ask any respondent to supplement the data in its proposal, but expects proposals to be complete upon submission. To the extent practicable, OEA encourages respondents to provide data and evidence of all project merits in a form that is publicly available or verifiable.

Proposals must be submitted electronically to: Director, OEA, using

the electronic address described in **ADDRESSES**.

V. Application Review Information

1. *Selection Criteria*—Upon validating the eligibility of the interested respondent to apply for assistance, an evaluation panel, designated by OEA, evaluates proposal content conforming to this notice as the basis for inviting a formal grant application. The proposed selection criteria, with relative weights, are:

(a) The extent to which the transportation issue impedes the provision of care, *i.e.,* the military medical mission (*e.g.,* the greater the number of patients, patient visitors and patient care workers impacted, the more serious the consequences to patients, etc., the higher the score), 25%;

(b) The magnitude (*e.g.* overall number of people affected, degree of failure, etc.) of the transportation issue that affects the military medical facility, expressed in terms of accepted and appropriate transportation planning and assessment techniques (the greater the magnitude of the issue, the higher the score), 25%;

(c) The applicant's ability to execute the proposed project, including the extent of other funding for the project and the ability to meet project timelines and budgets, acquire site control, permits or concurrences of affected parties, etc. (the greater the demonstration of the applicant's ability, the greater the score), 25%; and

(d) The extent to which the proposed construction project resolves the transportation issue (the more the project does to resolve the transportation issue, the higher the score), 25%.

Comments on the above selection criteria that are received by OEA not later than August 19, 2011, will be considered, and changes to these selection criteria, if any, will be announced in the **Federal Register** on or about September 9, 2011.

2. *Review and Selection Process*—The composition of the evaluation panel, to include other Federal agency staff with technical proficiencies and relevant experience, will be finalized after the Proposal Deadline, based on the number and nature of proposals received. The panel will rank all proposals against the Selection Criteria, and make recommendations to the Director, OEA. Panel members will be subject to a non-disclosure agreement and be expected to keep the review of these proposals confidential until released from the non-disclosure agreement by OEA.

OEA will notify each respondent within 30 days of the Proposal Deadline whether the respondent's proposal:

- Was successful and invite the successful respondent to submit a grant application directly to OEA. OEA will assign a Project Manager to advise and assist successful respondents in the completion of the grant application;
- Was unsuccessful and state the reasons why; or
- Remains under consideration pending the receipt of additional information which OEA will identify.

VI. Award Administration Information

1. *Award Notices*—A successful applicant (Grantee) will be invited to complete an eGrant application and receive a notice of award in the form of a Grant Agreement, signed by the Director, OEA (Grantor), on behalf of DoD. The Grant Agreement will be transmitted electronically. OEA reserves the right to transfer funds to another Federal agency for award on behalf of a state or local government, when OEA determines that it is in the best interests of the Government to do so.

2. *Administrative and National Policy Requirements*—The Grantee and any consultant/contractor operating under the terms of a grant shall comply with all Federal, State, and local laws applicable to its activities including the following: National Environmental Policy Act; National Historic Preservation Act; 32 CFR Part 33, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;'' OMB Circulars A–87, ''Cost Principles for State and Local Governments'' and the revised A–133, ''Audits of States, Local Governments and Non-Profit Organizations;'' 32 CFR Part 25, ''Government-wide Debarment and Suspension (Non-procurement);'' 32 CFR Part 26,''Drug-free Workplace;'' and 32 CFR Part 28, ''New Restrictions on Lobbying (Grants).''

3. *Reporting*—OEA requires interim performance reports and one final performance report for each award. The performance reports will contain information on the following:

- A comparison of actual accomplishments to the objectives established for the reporting period;
- Reasons for slippage and proposed plan to mitigate;
- Additional pertinent information when appropriate;
- A comparison of actual and projected expenditures for the period;
- The amount of awarded funds on hand at the beginning and end of the reporting period.

The final performance report must contain a summary of activities for the entire award period. An SF 425, ''Financial Status Report,'' must be submitted to OEA within ninety (90) days after the end date of the award. Any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Office of Economic Adjustment.

OEA will provide a schedule for reporting periods and report due dates in the Award Agreement.

VII. Agency Contacts

For further information, to answer questions, or for help with problems, contact: David F. Witschi, Associate Director, OEA, *telephone:* (703) 604–6020, *e-mail: david.witschi@wso.whs.mil mailto:david.larson@wso.whs.mil* or regular mail at 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704.

VIII. Other Information

The OEA Internet address is *http://www.oea.gov*.

Dated: July 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–18400 Filed 7–20–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0080]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on August 22, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 15, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 18, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 02 DoD

SYSTEM NAME:

Defense Enrollment Eligibility Recording System (DEERS) (August 7, 2009, 74 FR 39657).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Beneficiary's name; Service or Social Security Number (SSN); DoD ID number, enrollment number; relationship of beneficiary to sponsor; residence address of beneficiary or sponsor; date of birth of beneficiary; gender of beneficiary; branch of Service of sponsor; dates of beginning and ending eligibility; number of family members of sponsor; primary unit duty location of sponsor; race and ethnic origin of beneficiary; occupation of sponsor; rank/pay grade of sponsor; disability documentation; wounded, ill and injured identification information; other health information, *i.e.* tumor/reportable disease registry; Medicare eligibility and enrollment data; primary and secondary fingerprints and photographs of beneficiaries; blood test results; Deoxyribonucleic Acid (DNA); dental care eligibility codes and dental x-rays.

Patient registration data for shared DoD/VA beneficiary populations, including VA Integration Control Number (ICN), VA patient type, patient category code and patient category name of sponsor and beneficiary, patient location Defense Medical Information System, patient location date, identity and relationship data, command interest code and name, command security code and name, medical fly status code.

Catastrophic Cap and Deductible (CCD) transactions, including monetary amounts; CHAMPUS/TRICARE claim records containing enrollee, participant and health care facility, provider data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care; citizenship data/country of birth; civil service employee employment information (agency and bureau, pay plan and grade, nature of action code and nature of action effective date, occupation series, dates of promotion and expected return from overseas, service computation date); claims data; compensation data; contractor fee payment data; date of separation of former enlisted and officer personnel; third party health insurance information on dependents; demographic data (kept on others beyond beneficiaries) date of birth, home of record state, sex, race, education level; VA disability payment records; digital signatures where appropriate to assert validity of data; e-mail (home/work); emergency contact person information; care giver information; immunization data; Information Assurance (IA) Work Force information; language data; military personnel information (rank, assignment/deployment, length of service, military occupation, education, and benefit usage); pharmacy benefits; reason leaving military service or DoD civilian service; Reserve member's civilian occupation and employment information; education benefit eligibility and usage; special military pay information; SGLI/FGLI; stored documents for proofing identity and association; workforces information (*e.g.* acquisition, first responders); Privacy Act audit logs.''

* * * * *

DELETE ENTRY AND REPLACE WITH ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for the purpose of identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in turn be used to identify those employed beneficiaries who have employment-related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data matching against the SSA Master Beneficiary Record file for the purpose of identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

2. To the Office of Disability and Insurance Security Programs, for the purpose of expediting disability processing of wounded military service members and veterans.

3. To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

4. To each of the fifty states and the District of Columbia for the purpose of conducting an on-going computer matching program with state Medicaid agencies to determine the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

5. To provide dental care providers assurance of treatment.

6. To Federal agencies and/or their contractors, the Transportation Security Administration and other Federal transportation agencies, for purposes of authenticating the identity of

individuals who, incident to the conduct of official business, present the Common Access Card or similar identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.

7. To State and local child support enforcement agencies for purposes of providing information, consistent with the requirements of 29 U.S.C. 1169(a), 42 U.S.C. 666(a)(19), and E.O. 12953 and in response to a National Medical Support Notice (NMSN) (or equivalent notice if based upon the statutory authority for the NMSN), regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD health care coverage. NOTE: Information requested by the States is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

8. To the Department of Health and Human Services (HHS):

a. For purposes of providing information, consistent with the requirements of 42 U.S.C. 653 and in response to an HHS request, regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD healthcare coverage. NOTE: Information requested by HHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

b. For purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

c. To the Office of Child Support Enforcement, Federal Parent Locator Service, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; the relationship to a child receiving benefits provided by a third party and the name and SSN of those third party providers who have a legal responsibility. Identifying delinquent obligors will allow state child support enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

d. For purposes of providing information to the Centers for Medicare and Medicaid Services (CMS) to account for the impact of DoD healthcare on local reimbursement rates for the Medicare Advantage program as required in 42 CFR 422.306.

9. To the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.

10. To the Department of Veterans Affairs (DVA):

a. To provide military personnel, pay and wounded, ill and injured identification data for present and former military personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968) and for DVA to administer the Traumatic Servicemember's Group Life Insurance (TSGLI) (Traumatic Injury Protection Rider to Servicemember's Group Life Insurance (TSGLI), 38 CFR part 9.20).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension Program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

(1) Providing full identification of active duty military personnel, including full time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (10 U.S.C., Chapter 1606—Selected Reserve and 38 U.S.C., Chapter 30—Active Duty), the REAP educational benefit (Title 10 U.S.C, Chapter 1607), and the National Call to Service enlistment educational benefit (10, Chapter 510), the Post 9/11 GI Bill (38 U.S.C., Chapter 33) and The Transferability of Education Assistance to Family Members. The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

f. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

11. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

12. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

13. To Defense contractors to monitor the employment of former DoD employees and military members subject to the provisions of 41 U.S.C. 423.

14. To Federal and quasi Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help

eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. Information released includes name, SSN, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

15. To Federal and quasi Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipients' understanding of, and willingness to abide by these provisions.

16. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

17. To Federal and State agencies to validate demographic data (*e.g.,* SSN, citizenship status, date and place of birth, *etc.*) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

18. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

19. To the Federal voting program to provide unit and e-mail addresses for the purpose of notifying the military members where to obtain absentee ballots.

20. To the Department of Homeland Security for the conduct of studies related to the health and well-being of Coast Guard members and to authenticate and identify Coast Guard personnel.

21. To Coast Guard recruiters in the performance of their assigned duties.

22. To Federal Agencies, to include OPM, Postal Service, Executive Office of the President and Administrative Office of the Courts; to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

a. Providing all reserve military members who could be eligible for TRICARE Premium Based programs, such as TRICARE Reserve Select (TRS) and TRICARE Retired Reserve (TRR) to be matched against the Federal agencies for providing those reserve military members that are also Federal civil service employees. This disclosure by the Federal agencies will provide the DoD with the FEHB eligibility and Federal employment information necessary to determine continuing eligibility for the TRS program. Only those reservists not eligible for FEHB are eligible for TRS (10 U.S.C. 1076d).

b. Providing all reserve military members to be matched against the Federal agencies for the purpose of identifying the Reserve Forces who are also employed by the Federal Government in a civilian position, so that reserve status can be terminated if necessary. To accomplish an emergency mobilization, individuals occupying critical civilian positions cannot be mobilized as Reservists.

c. To the Department of Education for the purpose of identifying dependent children of those military members killed in Operation Iraqi Freedom and Operation Enduring Freedom (OIF/OEF), Afghanistan Only, for possible benefits.

23. To Federal and contractor medical personnel at joint DoD/VA health care clinics, for purposes of authenticating the identity of individuals who are registered as patients at the clinic and maintaining, through the correlation of DoD ID number and Integration Control Number (ICN), a shared population of DoD and VA beneficiaries who are users of the clinic.

The DoD ''Blanket Routine Uses'' published at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Hardcopy version of DD Form 1172: Destroy once written to optical disk. Optical disks: Destroy primary and backup copies after 5 years.

The DEERS database is Permanent: Cut off (take a snapshot) at end of Fiscal Year and transfer to the National Archives and Records Administration in accordance with 36 CFR 1228.270 and 36 CFR 1234. (N1–330–03–01)

Output records (electronic or paper summary reports) are deleted or destroyed when no longer needed for operational purposes. *Note:* This disposition instruction applies only to recordkeeping copies of the reports retained by DMDC. The DoD office requiring creation of the report should maintain its record keeping copy in accordance with NARA approved disposition instructions for such reports.''

* * * * *

DMDC 02 DoD

SYSTEM NAME:

Defense Enrollment Eligibility Recording System (DEERS).

SYSTEM LOCATION:

EDS—Service Management Center, 1075 West Entrance Drive, Auburn Hills, MI 48326–2723.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members, former members, retirees, civilian employees (includes non-appropriated fund) and contractor employees of all of the Uniformed Services; Presidential appointees of all Federal Government agencies; Medal of Honor recipients; U.S. Military

Academy students; non-Federal agency civilian associates (*e.g.,* American Red Cross paid employees, non-DoD contract employees); DoD local national hires; DoD beneficiaries; dependents; civilian retirees; prior military eligible for Department of Veterans Affairs (VA) benefits; and members of the public treated for a medical emergency in a DoD or joint DoD/VA medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Beneficiary's name; Service or Social Security Number (SSN); DoD ID number, enrollment number; relationship of beneficiary to sponsor; residence address of beneficiary or sponsor; date of birth of beneficiary; gender of beneficiary; branch of Service of sponsor; dates of beginning and ending eligibility; number of family members of sponsor; primary unit duty location of sponsor; race and ethnic origin of beneficiary; occupation of sponsor; rank/pay grade of sponsor; disability documentation; wounded, ill and injured identification information; other health information, *i.e.* tumor/reportable disease registry; Medicare eligibility and enrollment data; primary and secondary fingerprints and photographs of beneficiaries; blood test results; Deoxyribonucleic Acid (DNA); dental care eligibility codes and dental x-rays.

Patient registration data for shared DoD/VA beneficiary populations, including VA Integration Control Number (ICN), VA patient type, patient category code and patient category name of sponsor and beneficiary, patient location Defense Medical Information System, patient location date, identity and relationship data, command interest code and name, command security code and name, medical fly status code.

Catastrophic Cap and Deductible (CCD) transactions, including monetary amounts; CHAMPUS/TRICARE claim records containing enrollee, participant and health care facility, provider data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care; citizenship data/country of birth; civil service employee employment information (agency and bureau, pay plan and grade, nature of action code and nature of action effective date, occupation series, dates of promotion and expected return from overseas, service computation date); claims data; compensation data; contractor fee payment data; date of separation of former enlisted and officer personnel; third party health insurance information on dependents; demographic data (kept on others beyond beneficiaries) date of birth, home of record state, sex, race, education level; VA disability payment records; digital signatures where appropriate to assert validity of data; e-mail (home/work); emergency contact person information; care giver information; immunization data; Information Assurance (IA) Work Force information; language data; military personnel information (rank, assignment/deployment, length of service, military occupation, education, and benefit usage); pharmacy benefits; reason leaving military service or DoD civilian service; Reserve member's civilian occupation and employment information; education benefit eligibility and usage; special military pay information; SGLI/FGLI; stored documents for proofing identity and association; workforces information (*e.g.* acquisition, first responders); Privacy Act audit logs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3, Inspector General Act of 1978; 5 U.S.C. Chapter 90, Federal Long-Term Care Insurance; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. Chapter 53, Miscellaneous Rights and Benefits; 10 U.S.C. Chapter 54, Commissary and Exchange Benefits; 10 U.S.C. Chapter 55 Medical and Dental Care; 10 U.S.C. Chapter 58, Benefits and Services for Members being Separated or Recently Separated; 10 U.S.C. Chapter 75, Deceased Personnel; 10 U.S.C. § 2358, Research and Development Projects; 20 U.S.C. 1070a (f)(4), Higher Education Opportunity Act; 31 U.S.C. 3512(c), Executive Agency Accounting and Other Financial Management; 42 U.S.C. 1973ff, Federal Responsibilities; 50 U.S.C. Chapter 23, Internal Security; DoD Directive 1000.4, Federal Voting Assistance Program (FVAP); DoD Directive 1341.1, Defense Enrollment/Eligibility Reporting System; DoD Instruction 1341.2, DEERS Procedures; Homeland Security Presidential Directive 12, Policy for a common Identification Standard for Federal Employees and Contractors; 38 CFR part 9.20, Traumatic injury protection; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To provide a database for determining eligibility for DoD entitlements and privileges; to support DoD health care management programs; to provide identification of deceased members; to record the issuance of DoD badges and identification cards, *i.e.* Common Access Cards (CAC) or beneficiary identification cards; and to detect fraud and abuse of the benefit programs by claimants and providers to include appropriate collection actions arising out of any debts incurred as a consequence of such programs.

To authenticate and identify DoD affiliated personnel (*e.g.,* contractors); to assess manpower, support personnel and readiness functions; to perform statistical analyses; identify current DoD civilian and military personnel for purposes of detecting fraud and abuse of benefit programs; to register current DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are entitled; to ensure benefit eligibility is retained after separation from the military; information will be used by agency officials and employees, or authorized contractors, and other DoD Components for personnel and manpower studies; and to assist in recruiting prior-service personnel.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for the purpose of identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in turn be used to identify those employed beneficiaries who have employment-related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data matching against the SSA Master Beneficiary Record file for the purpose of identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

2. To the Office of Disability and Insurance Security Programs, for the purpose of expediting disability processing of wounded military service members and veterans.

3. To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

4. To each of the fifty states and the District of Columbia for the purpose of conducting an on-going computer matching program with state Medicaid agencies to determine the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

5. To provide dental care providers assurance of treatment.

6. To Federal agencies and/or their contractors, the Transportation Security Administration and other Federal transportation agencies, for purposes of authenticating the identity of individuals who, incident to the conduct of official business, present the Common Access Card or similar identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.

7. To State and local child support enforcement agencies for purposes of providing information, consistent with the requirements of 29 U.S.C. 1169(a), 42 U.S.C. 666(a)(19), and E.O. 12953 and in response to a National Medical Support Notice (NMSN) (or equivalent notice if based upon the statutory authority for the NMSN), regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD health care coverage. *Note:* Information requested by the States is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

8. To the Department of Health and Human Services (HHS):

a. For purposes of providing information, consistent with the requirements of 42 U.S.C. 653 and in response to an HHS request, regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD healthcare coverage. *Note:* Information requested by HHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

b. For purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

c. To the Office of Child Support Enforcement, Federal Parent Locator Service, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; the relationship to a child receiving benefits provided by a third party and the name and SSN of those third party providers who have a legal responsibility. Identifying delinquent obligors will allow state child support enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

d. For purposes of providing information to the Centers for Medicare and Medicaid Services (CMS) to account for the impact of DoD healthcare on local reimbursement rates for the Medicare Advantage program as required in 42 CFR 422.306.

9. To the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.

10. To the Department of Veterans Affairs (DVA):

a. To provide military personnel, pay and wounded, ill and injured identification data for present and former military personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968) and for DVA to administer the Traumatic Servicemember's Group Life Insurance (TSGLI) (Traumatic Injury Protection Rider to Servicemember's Group Life Insurance (TSGLI), 38 CFR part 9.20).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension Program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

(1) Providing full identification of active duty military personnel, including full time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (10 U.S.C., Chapter 1606—Selected Reserve and 38 U.S.C., Chapter 30—Active Duty), the REAP educational benefit (Title 10 U.S.C, Chapter 1607), and the National Call to Service enlistment educational benefit (10, Chapter 510), the Post 9/11 GI Bill (38 U.S.C., Chapter 33) and The Transferability of Education Assistance to Family Members. The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

f. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

11. To DoD Civilian Contractors and grantees for the purpose of performing

research on manpower problems for statistical analyses.

12. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

13. To Defense contractors to monitor the employment of former DoD employees and military members subject to the provisions of 41 U.S.C. 423.

14. To Federal and quasi Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. Information released includes name, SSN, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

15. To Federal and quasi Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipients' understanding of, and willingness to abide by these provisions.

16. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

17. To Federal and State agencies to validate demographic data (*e.g.,* SSN, citizenship status, date and place of birth, *etc.*) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

18. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

19. To the Federal voting program to provide unit and e-mail addresses for the purpose of notifying the military members where to obtain absentee ballots.

20. To the Department of Homeland Security for the conduct of studies related to the health and well-being of Coast Guard members and to authenticate and identify Coast Guard personnel.

21. To Coast Guard recruiters in the performance of their assigned duties.

22. To Federal Agencies, to include OPM, Postal Service, Executive Office of the President and Administrative Office of the Courts; to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

a. Providing all reserve military members who could be eligible for TRICARE Premium Based programs, such as TRICARE Reserve Select (TRS) and TRICARE Retired Reserve (TRR) to be matched against the Federal agencies for providing those reserve military members that are also Federal civil service employees. This disclosure by the Federal agencies will provide the DoD with the FEHB eligibility and Federal employment information necessary to determine continuing eligibility for the TRS program. Only those reservists not eligible for FEHB are eligible for TRS (10 U.S.C. 1076d).

b. Providing all reserve military members to be matched against the Federal agencies for the purpose of identifying the Reserve Forces who are also employed by the Federal Government in a civilian position, so that reserve status can be terminated if necessary. To accomplish an emergency mobilization, individuals occupying critical civilian positions cannot be mobilized as Reservists.

c. To the Department of Education for the purpose of identifying dependent children of those military members killed in Operation Iraq Freedom and Operation Enduring Freedom (OIF/OEF), Afghanistan Only, for possible benefits.

23. To Federal and contractor medical personnel at joint DoD/VA health care clinics, for purposes of authenticating the identity of individuals who are registered as patients at the clinic and maintaining, through the correlation of DoD ID number and Integration Control Number (ICN), a shared population of DoD and VA beneficiaries who are users of the clinic.

The DoD ''Blanket Routine Uses'' published at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records about individuals are retrieved by an algorithm which uses name, SSN, date of birth, rank, and duty location as possible inputs. Retrievals are made on summary basis by geographic characteristics and location and demographic characteristics. Information about individuals will not be distinguishable in summary retrievals. Retrievals for the purposes of generating address lists for direct mail distribution may be made using selection criteria based on geographic and demographic keys.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is

restricted by the use of locks, guards, and administrative procedures (*e.g.,* fire protection regulations).

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subjects of the record or their authorized representatives. Access to personal information is further restricted by the use of passwords, which are changed periodically. All individuals granted access to this system of records are to have received Information Assurance and Privacy Act training.

RETENTION AND DISPOSAL:

Hardcopy version of DD Form 1172: Destroy once written to optical disk. Optical disks: Destroy primary and backup copies after 5 years.

The DEERS database is Permanent: Cut off (take a snapshot) at end of Fiscal Year and transfer to the National Archives and Record Administration in accordance with 36 CFR 1228.270 and 36 CFR 1234. (N1–330–03–01)

Output records (electronic or paper summary reports) are deleted or destroyed when no longer needed for operational purposes. *Note:* This disposition instruction applies only to recordkeeping copies of the reports retained by DMDC. The DoD office requiring creation of the report should maintain its record keeping copy in accordance with NARA approved disposition instructions for such reports.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

Written requests should contain the full name, SSN, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the name and number of this system of records notice along with the full name, SSN, date of birth, and current address and telephone number of the individual and be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals and the personnel, pay, and benefit systems of the military and civilian departments and agencies of the Uniformed Services, VA, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–18397 Filed 7–20–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committee

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C. 2904, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense (DoD) gives notice that it is renewing the charter for the Strategic Environmental Research and Development Program Scientific Advisory Board (hereafter referred to as the ''Board'').

Pursuant to 10 U.S.C. 2904(a), the Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall jointly establish the Strategic Environmental Research and Development Program Scientific Advisory Board. The Advisory Board, pursuant to 10 U.S.C. 2904, shall operate and comply with the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), and 41 CFR 102–3.50(a).

Pursuant to 10 U.S.C. 2902 and 2904(e), the Strategic Environmental Research and Development Program Council (hereafter referred to as the Council), shall refer to the Advisory Board, and the Advisory Board shall review, each proposed research project including its estimated cost, for research in and development of technologies related to environmental activities in excess of $1,000,000. The Council, pursuant to its responsibilities under 10 U.S.C. 2902(d)(1) and in an effort to enhance the Advisory Board's review process, has lowered the Advisory Board's dollar threshold to any proposed research projects in excess of $900,000. The Advisory Board shall make any recommendations to the Council that the Advisory Board considers appropriate regarding such project or proposal.

The Advisory Board may make recommendations to the Council regarding technologies, research, projects, programs, activities, and, if appropriate, funding within the scope of the Strategic Environmental Research and Development Program. In addition, the Advisory Board shall assist and advise the Council in identifying the environmental data and analytical assistance activities that should be covered by the policies and procedures prescribed pursuant to 10 U.S.C. 2902(d)(1).

Pursuant to 10 U.S.C. 2904(e), the Advisory Board shall make any recommendations to the Council that the Advisory Board considers appropriate regarding projects or proposals.

The Advisory Board, pursuant to 10 U.S.C. 2904(a), shall be comprised of not more than 14 members. Pursuant to 10 U.S.C. 2904(b), the Advisory Board membership shall be comprised of the following:

a. Permanent members of the Advisory Board are the Science Advisor to the President, the Administrator of the National Oceanic and Atmospheric Administration, or their designees;

b. Non-permanent members of the Advisory Board shall be appointed from among persons eminent in the fields of basic sciences, engineering, ocean and environmental sciences, education, research management, international and security affairs, health physics, health sciences, or social sciences, with due regard given to the equitable representation of scientists and engineers who are women or who represent minority groups. One such member of the Advisory Board shall be a representative of environmental public interest groups, and one such member shall be a representative of the interests of State governments.

Pursuant to 10 U.S.C. 2904(b)(3), the Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental

Protection Agency, shall request that the:

a. Head of the National Academy of Science, in consultation with the head of the National Academy of Engineering and the head of the Institutes of Medicine of the National Academy of Sciences, nominate persons for appointment to the Advisory Board;

b. Council of Environmental Quality nominate for appointment to the Advisory Board at least one person who is a representative of environmental public interest groups; and

c. National Association of Governors nominate for appointment to the Advisory Board at least one person who is a representative of the interests of State governments.

The Advisory Board, pursuant to 10 U.S.C. 2904(d), shall develop procedures for carrying out its responsibilities. Such procedures shall define a quorum as a majority of the members, and shall provide for the annual election of the Advisory Board's chairperson. The permanent Advisory Board members, defined above, shall be appointed as regular government employee members, and their appointments shall be based upon their official position in the Federal government. Both individuals may designate another regular government officer or employee from their offices to represent their interests before the Advisory Board. Advisory Board members appointed by the Secretary of Defense and the Secretary of Energy, who are not full-time or permanent part-time Federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C 3109, and serve as special government employee members.

While the Council of Environmental Quality and the National Association of Governors nominate individuals to represent certain interests, these individuals are appointed by the Secretary of Defense and, these individuals, along with the other members, to include the regular government employee members, are appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Pursuant to 10 U.S.C. 2904(h), each member of the Advisory Board shall be required to file a financial disclosure report under title I of the Ethics in Government Act of 1978 (5 U.S.C. App.).

With the exception of those experts and consultants that are appointed members of the Advisory Board, all others, to include subject matter experts that are invited by the Advisory Board or experts and consultants that are from the general public attending meetings are not authorized to participate in the Advisory Board's deliberations.

The terms of member appointments shall not be less than two but not more than four years, as provided in 10 U.S.C. 2904(b)(4) and approved by the Secretary of Defense. All appointments shall be reviewed by the Secretary of Defense on an annual basis.

With the exception of travel and per diem for official travel, Advisory Board members shall serve without compensation.

With DoD approval, the Advisory Board is authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other appropriate Federal regulations.

Such subcommittees shall not work independently of the chartered Advisory Board, and shall report all their recommendations and advice to the Advisory Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Advisory Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Advisory Board members. Subcommittee members, who are not Advisory Board members, shall be appointed in the same manner as the Advisory Board members. Such individuals, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employee members, whose appointments must be renewed on an annual basis. With the exception of per diem for official travel, subcommittee members shall serve without compensation.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Advisory Board shall meet at the call of the Advisory Board's Designated Federal Officer, in consultation with the Chairperson. Pursuant to 10 U.S.C. 2904(d), the minimum number of Advisory Board meetings is four per year. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all Advisory Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Advisory Board or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Strategic Environmental Research and Development Program Scientific Advisory Board's membership about the Advisory Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Strategic Environmental Research and Development Program Scientific Advisory Board.

All written statements shall be submitted to the Designated Federal Officer for the Strategic Environmental Research and Development Program Scientific Advisory Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Strategic Environmental Research and Development Program Scientific Advisory Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Strategic Environmental Research and Development Program Scientific Advisory Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: July 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2011–18406 Filed 7–20–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committee

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense (DoD) gives notice that it is renewing the charter for the Department of Defense Audit Advisory Committee (hereafter referred to as the ''Committee'').

The Committee is a discretionary federal advisory committee that shall provide the Secretary of Defense, through the Under Secretary of Defense (Comptroller)/Chief Financial Officer, independent advice and recommendations on DoD financial management, to include financial reporting processes, systems of internal controls, audit processes, and processes for monitoring compliance with relevant laws and regulations.

The Under Secretary of Defense (Comptroller)/Chief Financial Officer may act upon the Committee's advice and recommendations.

The Committee shall be comprised of no more than seven members, who are distinguished members of the audit, accounting and financial communities. No Committee members shall be a full-time or part-time DoD employee.

Committee members are appointed to provide advice on behalf of the government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. The Secretary of Defense shall renew their appointments on an annual basis.

With the exception of travel and per diem for official travel, Committee members shall serve without compensation.

Committee members shall not be allowed to serve on the Committee for more than three consecutive terms.

The Under Secretary of Defense (Comptroller)/Chief Financial Officer shall select the Committee's Chairperson from the membership at large.

With DoD approval, the Committee is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other governing Federal regulations.

Such subcommittees shall not work independently of the chartered Committee, and shall report all their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Committee; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Committee members.

Subcommittee members, who are not Committee members, shall be appointed in the same manner as the Committee members. Such individuals, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees, whose appointments must be renewed on an annual basis. With the exception of travel, subcommittee members shall serve without compensation.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Committee shall meet at the call of the Designated Federal Officer, in consultation with the Committee's Chairperson and the estimated number of Committee meetings is four per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all Committee and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Committee or subcommittee meeting. The Designated Federal Officer shall, in coordination with the Chairperson approve all meeting agendas and adjourn any meeting when the Designated Federal Officer determines adjournment to be in the public interest.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Department of Defense Audit Advisory Committee's membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Department of Defense Audit Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Department of Defense Audit Advisory Committee, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Audit Advisory Committee Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Audit Advisory Committee. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: July 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–18402 Filed 7–20–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Termination of Department of Defense Federal Advisory Committee

AGENCY: Department of Defense.

ACTION: Termination of Federal Advisory Committee.

SUMMARY: Under the provisions of Section 1082 of Public Law 110–181, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), 41 CFR 102–3.55(a)(1), and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), effective June 22, 2011 the Department of Defense gives notice that it is terminating the Advisory Panel on DoD Capabilities for Support of Civil Authorities After Certain Incidents.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

Dated: July 13, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–18401 Filed 7–20–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Withdrawal of Notices Inviting Applications for New Awards for Fiscal Year (FY) 2011; European Union-United States Atlantis (Atlantis) Program, et al.

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information:

CFDA No. 84.116J, 84.116M, and 84.116N.

Withdrawal of Notices inviting applications for new awards for Fiscal Year (FY) 2011; European Union-United States Atlantis (Atlantis) Program; U.S.-Brazil Higher Education Consortia (U.S.-Brazil) Program; and the North American Mobility in Higher Education (NAM) Program.

SUMMARY: On April 1, 2011 (76 FR 18198) (Atlantis); March 29, 2011 (76 FR 17391) (U.S.-Brazil); and March 25, 2011 (76 FR 16743) (NAM), the Department published in the **Federal Register** notices inviting applications for new awards for each of the programs identified. On April 15, 2011, the President signed Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, which substantially reduced funds available for the Department's Higher Education account. This account is the source of funding for grants in these programs under the Fund for the Improvement of Postsecondary Education. Therefore, no new grants will be made under the Atlantis, U.S.-Brazil, or NAM programs in FY 2011. As such, the Department withdraws these notices inviting applications for new awards for FY 2011.

Program Authority: 20 U.S.C. 1138–1138d.

FOR FURTHER INFORMATION CONTACT:

For information on Atlantis, International and Foreign Language Education (IFLE): Tanyelle Richardson, U.S. Department of Education, 1990 K Street, NW., room 6099, Washington, DC 20006–8521. *Telephone:* (202) 502–7626 or by *e-mail: tanyelle.richardson@ed.gov.*

For information on U.S.-Brazil, IFLE: Michelle Guilfoil, U.S. Department of Education, 1990 K Street, NW., room 6098, Washington, DC 20006–8521. *Telephone:* (202) 502–7625 or by *e-mail: michelle.guilfoil@ed.gov.*

For information on NAM, IFLE: Amy Wilson, U.S. Department of Education, 1990 K Street, NW., room 6082, Washington, DC 20006–8521. Telephone: (202) 502–7689 or by e-*mail: amy.wilson@ed.gov.*

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting one of the persons listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf, call the Federal Relay Service, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). 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.

Dated: July 18, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–18450 Filed 7–20–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department of Education (Department) gives notice that on March 18, 2011, an arbitration panel rendered a decision in the matter of *Sam Tocco* v. *Michigan Commission for the Blind, Case no. R–S/08–6.* This panel was convened by the Department under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by the petitioner, Sam Tocco.

FOR FURTHER INFORMATION CONTACT: You can obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5022, Potomac Center Plaza, Washington, DC 20202–2800. *Telephone:* (202) 245–7374. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Sam Tocco (Complainant) alleged violations by the Michigan Commission for the Blind, the State licensing agency (SLA), under the Act and its implementing regulations in 34 CFR part 395. Complainant alleged that the SLA violated the Act, the implementing regulations, and State rules and regulations by terminating his vending operator's license at the United States Postal Service's Pontiac vending route (Pontiac vending route).

Specifically, Complainant became a Randolph-Sheppard vendor in 2003. Beginning in 2006, he was promoted to the Pontiac vending route. In August and December 2006, the SLA was prepared to revoke Complainant's operating license for a variety of reasons that were not relevant to the subject arbitration. In August 2006, Complainant signed a probationary agreement with the SLA.

However, in the later part of 2007, Complainant again experienced compliance issues and the SLA and Complainant entered into another probationary agreement on September 19, 2007 (2007 probationary agreement), to resolve various outstanding issues. On January 15, 2008, the SLA informed Complainant that he had violated the terms of the 2007 probationary agreement and revoked his operating license, effective January 24, 2008, for failure to pay an annual health license fee.

Complainant then requested a full evidentiary hearing from the SLA on this matter. However, the SLA asserted that Complainant waived his right to an evidentiary hearing and other due process protections by signing the 2007 probationary agreement. Shortly thereafter, Complainant filed another request with the SLA for a full evidentiary hearing. On January 23, 2008, the SLA again denied Complainant's request for an evidentiary hearing.

On March 10, 2008, Complainant's representative filed a request with the Department to convene a Federal arbitration panel. On March 26, 2008, the Department responded to Complainant's request informing Complainant and the SLA that, while Complainant did not qualify for arbitration as he had not been provided

a full evidentiary hearing, Complainant had a statutory right to a full evidentiary hearing. The Department directed the SLA to schedule a full evidentiary and informed Complainant's representative if, after the full evidentiary had been conducted Complainant was still dissatisfied with the results, he could resubmit his request for Federal arbitration.

On September 3, 2008, the SLA provided Complainant a full evidentiary hearing conducted before an Administrative Law Judge (ALJ). On October 30, 2008, the ALJ issued her decision finding that Complainant was in compliance with the 2007 probationary agreement and also finding that his failure to pay the health license fee did not constitute a violation. As a remedy, the ALJ recommended that the SLA reinstate Complainant's operating license and that he be assigned a suitable vending location as soon as possible. In noting that Complainant had significant difficulties in the operation of the Pontiac vending route, the ALJ also recommended, without assigning any fault to Complainant or the SLA, that Complainant be assigned a better established and less demanding vending route.

On December 12, 2008, the SLA reviewed the ALJ's decision. The SLA adopted in part and rejected in part the ALJ's recommendations as final agency action. Specifically, the SLA accepted the recommendation to reinstate Complainant's operating license but rejected the ALJ's recommendation to assign Complainant to a suitable site that was a better established or less demanding route. Instead, the SLA required that Complainant bid on a vending location in accordance with existing SLA transfer and promotion rules and regulations.

On February 17, 2009, Complainant's representative again filed a request for Federal arbitration, alleging that the final agency action by the SLA did not provide an adequate remedy for the harm Complainant had incurred from the revocation of his operating license. On April 29, 2010, a Federal arbitration hearing was held.

Arbitration Panel Decision

After reviewing all of the evidence and testimony, the panel unanimously ruled that Complainant was entitled to receive a priority bid. Thus, the panel directed the SLA to waive the existing conditions governing the award of vending facilities and to consider Complainant the successful bidder on any vending facility or vending route for which he would be qualified and certified for a period of 12 months commencing with the date of the panel's decision. This ruling was considered ''an extraordinary remedy'' by the panel, based upon the specific circumstances of Complainant's case in which he lost his previous vending route as a result of the erroneous license revocation. The panel clearly indicated, however, that this case should not serve as a precedent for future cases because of these unique circumstances. Also, the panel denied the remedies requested by Complainant with respect to compensatory damages, punitive or exemplary damages, and restoration of Complainant's retirement benefits to his program pension plan.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 18, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–18448 Filed 7–20–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.116K]

Funding Down Slate; Training for Real-Time Writers (TRTW) Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of intent to fund down the grant slate from fiscal year (FY) 2010.

SUMMARY: The Secretary intends to use the grant slate developed in FY 2010 for the TRTW Program authorized by Section 872 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1161s, to make new grant awards in FY 2011. The Secretary takes this action because a significant number of high-quality applications remain on the FY 2010 grant slate and limited funding is available for new grant awards in FY 2011. Specifically, we expect to use an estimated $998,000 for new awards in FY 2011.

FOR FURTHER INFORMATION CONTACT: Erin McDermott, U.S. Department of Education, 1990 K Street, NW., Room 6161, Washington, DC 20006–8524. *Telephone:* (202) 502–7607 or via *Internet: Erin.McDermott@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2010, we published a notice in the **Federal Register** (75 FR 38510) inviting applications for FY 2010 for new awards under the TRTW Program (FY 2010 NIA).

In response to the FY 2010 NIA, we received a significant number of high-quality applications for grants under the TRTW Program and made four grant awards. Because such a large number of high-quality applications were received, many applications that received high scores by peer reviewers did not receive funding.

To conserve funding that would be required for a peer review of new grant applications submitted under this program and to instead use those funds to support grant activities, we will select grantees in FY 2011 from the existing slate of applicants developed during the FY 2010 competition using the priority, selection criteria, and application requirements referenced in the **Federal Register** notice published on July 2, 2010.

Program Authority: 20 U.S.C. 1161s.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF,

you must have Adobe Acrobat Reader, which is available free at this 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.

Dated: July 18, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–18454 Filed 7–20–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Public Scoping Meetings and Extension of Scoping Period for the U.S. Department of Energy Uranium Leasing Program Programmatic Environmental Impact Statement

AGENCY: Department of Energy (DOE).

ACTION: Notice of public scoping meetings and extension of scoping period.

SUMMARY: DOE will host public scoping meetings in western Colorado to receive comments on the scope of the DOE Uranium Leasing Program (ULP) Programmatic Environmental Impact Statement (hereinafter referred to as the ULP PEIS). The PEIS will analyze the reasonably foreseeable environmental impacts, including the site-specific impacts, of the range of reasonable alternatives for the management of DOE's ULP.

On June 21, 2011, DOE announced in the **Federal Register** (76 FR 36097) its intention to prepare the PEIS and opened a scoping period which would have closed August 22, 2011. The scoping period has been extended and will now close on September 9, 2011. DOE invites the public to submit written comments by any of the means listed in the **ADDRESSES** section. Oral as well as written comments may also be provided at the public scoping meetings to be held as listed under **SUPPLEMENTARY INFORMATION**.

DATES: DOE invites comments on the proposed scope of the PEIS from all interested parties. The public scoping period began on June 21, 2011, and will close on September 9, 2011. Comments on the scope of the PEIS should be submitted by September 9, 2011. Comments e-mailed or postmarked after that date will be considered to the extent practicable. DOE also invites all interested parties to participate in public scoping meetings. Dates and locations of the public scoping meetings are listed under **SUPPLEMENTARY INFORMATION** below. Requests to speak at any of the public scoping meetings can be submitted via the ULP PEIS Web site indicated in the **ADDRESSES** section and may also be made at the scoping meetings; however, requests received via the Web site before the scoping meetings will be given priority in the speaking order. For interested parties wishing to speak with a DOE representative, see the **FOR FURTHER INFORMATION CONTACT** section of this announcement.

ADDRESSES: Requests to speak at the public scoping meetings on the proposed scope of the PEIS may be submitted via the ULP PEIS Web site at *http://ulpeis.anl.gov* and at the public scoping meetings. Written comments may be submitted by any of the following means:

- By submitting electronic comments on the PEIS Web site at *http://ulpeis.anl.gov.*
- By e-mail to *ulpeis@anl.gov.*
- By mail to Laura Kilpatrick, Esq., DOE ULP Program Manager, Office of Legacy Management, U.S. Department of Energy, 11025 Dover Street, Suite 1000, Westminster, CO 80021.

FOR FURTHER INFORMATION CONTACT: For information on DOE's proposed action, contact Laura Kilpatrick, Esq., DOE ULP Program Manager, at the address listed above.

For general information on the DOE National Environmental Policy Act (NEPA) process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202–586–4600); fax (202–586–7031); or leave a toll-free message (1–800–472–2756).

SUPPLEMENTARY INFORMATION: On June 21, 2011, DOE published a notice in the **Federal Register** (76 FR 36097) announcing its intention to prepare the ULP PEIS and opening a scoping period that would have closed August 22, 2011. The PEIS will be prepared pursuant to NEPA (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Parts 1500–1508), and DOE's NEPA implementing procedures (10 CFR Part 1021). The PEIS will analyze the reasonably foreseeable environmental impacts, including site-specific impacts, of alternatives for the management of DOE's ULP, under which DOE administers tracts of land for the exploration, development, and extraction of uranium and vanadium ores. The ULP includes tracts of land located in Mesa, Montrose, and San Miguel counties in western Colorado that cover a cumulative acreage of approximately 25,000 acres. In the June 21, 2011, notice, DOE stated that it would hold public scoping meetings and announce the dates, times, and locations of these meetings in a subsequent **Federal Register** notice, as well as in local news media. DOE now announces the public scoping meetings to be held at the dates, times, and locations listed below. DOE is also extending the public scoping period to September 9, 2011.

Four public scoping meetings will be held as follows:

- August 8, 2011—Montrose Pavilion, 1800 Pavilion Dr., Montrose, CO 81401, from 6:30 to 9 p.m.
- August 9, 2011—Sheridan Opera House, 110 North Oak St., Telluride, CO 81435, from 6:30 to 9 p.m.
- August 10, 2011—Naturita Community Building, 411 W. 2nd St., Naturita, CO 81422, from 6:30 to 9 p.m.
- August 11, 2011—San Juan County Courthouse, Commission Chambers, 117 South Main St., Monticello, UT 84535, from 6:30 to 9 p.m.

At each of the public scoping meetings, registration to speak will be held starting at 6:30 pm. The formal commenting session will begin at 7 p.m. with a DOE presentation providing an overview of the DOE ULP, the proposed action for the ULP PEIS, and a description of the NEPA process for the ULP PEIS. Public comments will be received starting at 7:15 p.m. until the end of each meeting. The formal commenting session will be transcribed by a court stenographer. The presiding officer will establish the order of the speakers and procedures to ensure that everyone who wishes to speak has an opportunity to do so. Depending on the number of speakers, the presiding officer may limit all speakers to a set amount of time initially and provide additional opportunities to speak as time permits. Individuals may also provide written materials in lieu of, or supplemental to, their presentations, and such additional information may be submitted in writing by the date listed in the **DATES** section. Both oral and written comments will be considered and given equal weight by DOE.

Issued in Washington, DC, on July 15, 2011.

Thomas C. Pauling,

Acting Director, Office of Legacy Management.

[FR Doc. 2011–18373 Filed 7–20–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM07–16–000]

Filing via the Internet; Notice of Additional File Formats for efiling

Take notice that the Commission has added to its list of acceptable file formats the four-character file extensions for Microsoft Office 2007/2010, specifically MS Word (.docx), MS Excel (.xlsx), and MS PowerPoint (.pptx). It is no longer necessary to save files from Office 2007 or Office 2010 in an Office 2003 format prior to submission.

Dated: July 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18446 Filed 7–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2662–012; Project No. 12968–001]

FirstLight Hydro Generating Company; City of Norwich Department of Public Utilities; Notice of Applications Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Application:* New Major License.

b. *Project Nos.:* 2662–012 and 12968–001.

c. *Date filed:* August 31, 2010 (P–2662) and August 27, 2010 (P–12968).

d. *Applicants:* Existing licensee—FirstLight Hydro Generating Company (FirstLight); and Competitor—City of Norwich Department of Public Utilities (Norwich Public Utilities).

e. *Name of Project:* Scotland Hydroelectric Project.

f. *Location:* The existing project is located on the Shetucket River, in Windham County, Connecticut. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

For Project No. 2662: John Whitfield, Senior Project Engineer, FirstLight Hydro Generating Company, 20 Church Street, Hartford, CT 06103.

For Project No. 12968: John F. Bilda, General Manager, Norwich Public Utilities, 16 South Golden Street, Norwich, CT 06360.

i. *FERC Contact:* Janet Hutzel, telephone (202) 502–8675, or by e-mail *janet.hutzel@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions 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. The applications have been accepted for filing and are now ready for environmental analysis (EA).

l. *Project Description:* The existing project includes the following facilities: (1) A 480-foot-long earthen dam with a 12-inch reinforced concrete corewall consisting of (a) a 183-foot-long, 32.5-foot-high earthen dike with a top elevation 90.0 feet local datum; (b) a 119-foot-long, 34-foot-high Tainter gate section with a sill elevation at 64 feet local datum and a 3-foot-wide transition section, five 20-foot-wide bays, and four 4-foot-wide gate piers; (c) an 89-foot-long, 35-foot-high Ambursen-type ungated spillway section with a crest elevation of 75.38 feet local datum; (d) an 18.83-foot-long gravity-type ungated spillway section with a crest elevation of 75.38 feet local datum and 30-inch wooden pin-type flashboards; and (e) a 70-foot-long powerhouse and intake integral with the dam containing a single 2.0-megawatt (MW) turbine-generator; (2) a 134-acre reservoir at an elevation of 77.9 feet local datum with a usable storage capacity of 268 acre-feet; and (3) appurtenant facilities.

The existing Scotland Project operates in a run-of-river mode during high flow periods and in a store-and-release mode, with ponding, during low-flow periods.

Both applicants propose to increase capacity by installing an additional turbine and generator in the existing powerhouse. FirstLight's proposal would increase capacity by 1.026 MW. Norwich Public Utilities' proposal would increase capacity by 3.0 MW. Both applicants propose to operate the project as run-of-river at all times.

m. Copies of the applications are 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 numbers excluding the last three digits in the docket number field to access the documents. For assistance, contact FERC Online Support. Copies are also available for inspection and reproduction at the addresses in item (h) above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,''

''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY 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 applications directly from the applicants. 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 the 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.

o. *Procedural Schedule:*

The applications will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Issuance of the Better Adapted Statement Request.	July 15, 2011.
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	September 13, 2011.
Filing of the Better Adapted Statement.	September 13, 2011.
Commission issues EA	January 11, 2012.
Comments on EA	February 10, 2012.
Modified terms and conditions.	April 10, 2012.

p. Final amendments to the applications must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: July 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18439 Filed 7–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2985–008]

Onyx Specialty Papers, Inc.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of License.

b. *Project No.:* 2985–008.

c. *Date Filed:* June 1, 2010.

d. *Applicant:* Onyx Specialty Papers, Inc.

e. *Name of Project:* Willow Mill Project.

f. *Location:* Housatonic River in Berkshire County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. John Clements, Counsel for Onyx Specialty Papers, Inc., Van Ness Feldman, PC, 1050 Jefferson Street, NW., Suite 700, Washington, DC 20007–3877, phone (202) 298–1800.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing motions to intervene and protests, comments, recommendations, and preliminary terms and conditions, is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2985) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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. A copy of any motion to intervene must also be served upon each representative of the applicant specified in a particular application.

k. *Description of Request:* The applicant proposes to surrender the license for the Willow Mill Project. The licensee proposes: (1) To close the wicket gates and lock the operating mechanism to prevent water from entering the turbine/generator; (2) the main power switch will be shut off and the generator locked out to prevent power from being generated; (3) dam and structure would stay in place because they are needed for the paper mill operation; and (4) without the turbine/generator in service the dam will pass the additional turbine flow of 100 cubic feet per second.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. *Mailing list:* Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application (see item (j) above).

o. *Filing and Service of Responsive Documents:* All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' or ''TERMS AND CONDITIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an 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. 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. *e-Filing:* Comments, motions to intervene, protests, recommendations, or terms and conditions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e Filing'' link. The Commission strongly encourages electronic filings.

Dated: July 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18438 Filed 7–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–94–000.

Applicants: Gratiot County Wind LLC, Gratiot County Wind II LLC, Invenergy Wind Development LLC, The Detroit Edison Company.

Description: Application of Gratiot County Wind LLC, *et al.* for Authorization under section 203 of the FPA.

Filed Date: 07/13/2011.

Accession Number: 20110713–5185.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–105–000.

Applicants: Gratiot County Wind II LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Gratiot County Wind II LLC.

Filed Date: 07/13/2011.

Accession Number: 20110713–5137.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: EG11–106–000.

Applicants: Invenergy Wind Development Michigan LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Invenergy Wind Development Michigan LLC.

Filed Date: 07/13/2011.

Accession Number: 20110713–5146.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2928–002.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits tariff filing per 35: FPL Compliance Filing to Rate Schedule FERC No. 322 to be effective 5/1/2011.

Filed Date: 07/13/2011.

Accession Number: 20110713–5156.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: ER11–4041–000.

Applicants: Verde Energy USA Trading, LLC.

Description: Verde Energy USA Trading, LLC submits tariff filing per 35.12: Verde Energy MBR Application Filing to be effective 7/13/2011.

Filed Date: 07/13/2011.

Accession Number: 20110713–5115.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: ER11–4042–000.

Applicants: The Detroit Edison Company.

Description: The Detroit Edison Company submits tariff filing per 35.12: FERC Electric Rate Schedule No. 43 to be effective 12/31/9998.

Filed Date: 07/13/2011.

Accession Number: 20110713–5122.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: ER11–4043–000.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Company submits tariff filing per 35: TEP Updated OATT Diagram Filing to be effective 9/16/2010.

Filed Date: 07/13/2011.

Accession Number: 20110713–5123.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: ER11–4044–000.

Applicants: Gratiot County Wind LLC.

Description: Gratiot County Wind LLC submits tariff filing per 35.1: Application For Market-Based Rate Authorization and Requested Waivers & Approval to be effective 9/12/2011.

Filed Date: 07/13/2011.

Accession Number: 20110713–5124.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: ER11–4045–000.

Applicants: UNS Electric, Inc.

Description: UNS Electric, Inc. submits tariff filing per 35: UNSE Updated OATT Diagram Filing to be effective 9/16/2010.

Filed Date: 07/13/2011.

Accession Number: 20110713–5125.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: ER11–4046–000.

Applicants: Gratiot County Wind II LLC.

Description: Gratiot County Wind II LLC submits tariff filing per 35.1: Application For Market-Based Rate Authorization and Requested Waivers & Approval to be effective 9/12/2011.

Filed Date: 07/13/2011.

Accession Number: 20110713–5126.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: ER11–4047–000.

Applicants: Invenergy Wind Development Michigan LLC.

Description: Invenergy Wind Development Michigan LLC submits tariff filing per 35.1: Filing of Facilities Use Agreement, Request for Waivers and Blanket Approval to be effective 12/31/9998.

Filed Date: 07/13/2011.

Accession Number: 20110713–5127.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: ER11–4048–000.

Applicants: Gratiot County Wind LLC.

Description: Gratiot County Wind LLC submits tariff filing per 35.12: Co-

Tenancy and Shared Facilities Agreement and Request for Waivers to be effective 12/31/9998.

Filed Date: 07/13/2011.

Accession Number: 20110713–5128.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: ER11–4049–000.

Applicants: Gratiot County Wind II LLC.

Description: Gratiot County Wind II LLC submits tariff filing per 35.12: Co-Tenancy and Shared Facilities Agreement and Request for Waivers to be effective 12/31/9998.

Filed Date: 07/13/2011.

Accession Number: 20110713–5129.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: ER11–4050–000.

Applicants: Alamosa, LLC.

Description: Alamosa, LLC submits tariff filing per 35.12: Alamosa, LLC Market-Based Rate Tariff to be effective 8/15/2011.

Filed Date: 07/13/2011.

Accession Number: 20110713–5154.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: ER11–4051–000.

Applicants: CSOLAR IV South, LLC.

Description: CSOLAR IV South, LLC submits tariff filing per 35.12: Market-Based Rate Application to be effective 9/11/2011.

Filed Date: 07/13/2011.

Accession Number: 20110713–5155.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Docket Numbers: ER11–4052–000.

Applicants: Alpha Gas and Electric LLC.

Description: Alpha Gas and Electric LLC submits tariff filing per 35.13(a)(2)(iii: Market Based Rate Tariff Database to be effective 7/14/2011.

Filed Date: 07/13/2011.

Accession Number: 20110713–5176.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–2–000.

Applicants: Canandaigua Power Partners, LLC, Canandaigua Power Partners II, LLC, Evergreen Wind Power, LLC, Evergreen Wind Power III, LLC, Evergreen Wind Power V, LLC, First Wind Energy Marketing, LLC, Milford Wind Corridor Phase I, LLC, Milford Wind Corridor Phase II, LLC, Stetson Wind II, LLC, Vermont Wind, LLC.

Description: Land Acquisition Quarterly Report of Canandaigua Power Partners, LLC, *et al.*

Filed Date: 07/13/2011.

Accession Number: 20110713–5148.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 03, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–18364 Filed 7–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–53–000]

Shetek Wind Inc. Jeffers South, LLC Allco Renewable Energy Limited v. Midwest Independent Transmission System Operator, Inc.; Notice of Complaint

Take notice that on July 15, 2011, pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA), 16 U.S.C. 824e, 825e, and 825h, and Rules 206 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.212 (2010), Shetek Wind Inc., Jeffers South, LLC, and Allco Renewable Energy Limited (collectively Complainants) filed a formal complaint against the Midwest Independent Transmission System Operator (Midwest ISO or Respondent), and the applicable Midwest ISO Tariff on file with the Commission, alleging that Midwest ISO has not properly implemented the interconnection procedures contained in its Tariff, and, therefore, has engaged in practices that are contrary to the Tariff on file with the Commission and are unjust and unreasonable in violation of the Federal Power Act.

The Complainants certify that copies of the complaint were served on the contacts for Midwest ISO and other potentially interested entities as listed on the Commission's list of Corporate Officials.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 August 4, 2011.

Dated: July 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18440 Filed 7–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4050–000]

Alamosa, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Alamosa, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 3, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18444 Filed 7–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4046–000]

Gratiot County Wind II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Gratiot County Wind II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is August 3, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18443 Filed 7–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4044–000]

Gratiot County Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Gratiot County Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is August 3, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18442 Filed 7–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4041–000]

Verde Energy USA Trading, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Verde Energy USA Trading, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 3, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18441 Filed 7–20–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9442–5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Public Service Company of Colorado dba Xcel Energy—Pawnee Power Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit issued by the Colorado Department of Public Health and Environment (CDPHE). Specifically, the Administrator has partially granted and partially denied the February, 2010, Petition, submitted by WildEarth Guardians (Petitioner), to object to CDPHE's January 1, 2010, title V permit issued to Public Service Company of Colorado dba Xcel Energy (Xcel)—Pawnee Power Station.

Pursuant to section 505(b)(2) of the Clean Air Act (Act or CAA), Petitioners may seek judicial review of those portions of the petition that EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the Final Order, the Petition, and other supporting information at the EPA Region 8 Office, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you

contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the copies of the Final Order, the Petition, and other supporting information. You may view the hard copies Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours in advance. Additionally, the Final Order for Public Service Company of Colorado—Pawnee Power Station is available electronically at: *http://www.epa.gov/region7/air/title5/petitiondb/petitions/xcel_pawnee_response2010.pdf.*

FOR FURTHER INFORMATION CONTACT: Christopher Razzazian, Air Program (8P–AR), EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Phone: (303) 312–6648. E-mail: *razzazian.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and object to, as appropriate, a title V operating permit proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. EPA received a petition from WildEarth Guardians dated February 26, 2010, requesting that EPA object to the issuance of the title V operating permit to Public Service Company of Colorado for the operation of the Pawnee Power Station. The Petition alleges that the Permit does not comply with 40 CFR Part 70 in that it fails to assure compliance with: (I) Prevention of Significant Deterioration (PSD) requirements; (II) particulate matter (PM) limits applicable to the coal-fired boiler; (III) other applicable PM emission limits (and fails to require the facility to sufficiently monitor fugitive PM emissions); (IV) the 20-percent opacity limit under the New Source Performance Standards, Subpart Y, which applies to coal unloaded to storage activities; (V) PM emission limits applicable to specified point sources (and fails to require the facility to sufficiently monitor PM from those point sources); (VI) CAA § 112(j) for air toxics; and (VII) PSD requirements in regard to carbon dioxide emissions.

On June 30, 2011, the Administrator issued an Administrative Order partially granting and partially denying the Petition. The Order explains the reasons behind EPA's conclusions.

Dated: July 13, 2011.

Stephen S. Tuber,

Acting Regional Administrator, Region 8.

[FR Doc. 2011–18415 Filed 7–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9442–4]

Designation of an Ocean Dredged Material Disposal Site (ODMDS) in the Gulf of Mexico Off the Mouth of the Atchafalaya River, St. Mary Parish, LA

AGENCY: Region 6, U.S. Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for the designation of an ODMDS in the Gulf of Mexico off the mouth of the Atchafalaya River, St. Mary Parish, LA.

SUMMARY: The U.S. EPA, Region 6, in accordance with EPA's October 29, 1998 Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents (63 FR 58045), and in cooperation with the U.S. Army Corps of Engineers, New Orleans District (the Corps), will prepare an EIS for the designation of an ODMDS in the Gulf of Mexico off the mouth of the Atchafalaya River, St. Mary Parish, Louisiana. An EIS is needed to provide the information necessary to designate an ODMDS. This Notice of Intent is issued Pursuant to Section 102(c) of the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA), and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

DATES: Comments or names for the project mailing list must be submitted in writing on or before August 22, 2011.

ADDRESSES: Comments and/or names to be placed on the project mailing list should be sent to Jessica Franks, PhD, U. S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8335 or *e-mail: franks.jessica@epa.gov* or Mr. John F. Fiorentino, U.S. Army Corps of Engineers, New Orleans District, Coastal Environmental Compliance Section, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 862–1318 or *e-mail: John.Fiorentino@usace.army.mil.* Additional information is available on the EPA Web site at: *http://www.epa.gov/region6/water/ecopro/current_action.html.*

FOR FURTHER INFORMATION CONTACT: Jessica Franks, PhD at (214) 665–8335 or Mr. John Fiorentino at (504) 862–1318.

SUPPLEMENTARY INFORMATION: The Atchafalaya River and the Atchafalaya River Bar Channel (ARBC), located within the Federally-authorized and maintained Atchafalaya River and Bayous Chene, Boeuf, and Black, Louisiana project, provide vessel access to Morgan City, the Gulf Intracoastal Waterway (GIWW), and Bayous Chene, Boeuf, and Black from the Gulf of Mexico.

The ARBC is located in an area of heavy sedimentation. The bed load fraction of the sediment carried by the Atchafalaya River is deposited mainly in Atchafalaya Bay, resulting in delta accretion and progradation. The ARBC must receive periodic maintenance dredging to ensure safe navigation. Shoal material that could not be used beneficially has been placed (prior to 2002) at an existing MPRSA Section 102(c) ODMDS on the east side of the channel (the ODMDS-East). Concern has been expressed, and Corps studies have shown, that maintenance-dredged material—especially fluid mud, or ''fluff''—placed on the east side of the ARBC (particularly at the ODMDS-East) is rapidly transported back into the navigation channel by prevailing littoral currents.

Since 2002, shoal material from the ARBC not suitable for beneficial use has been placed at a temporary (*i.e.,* 5-year) ODMDS on the west side of the channel (the ODMDS-West) under the authority of MPRSA Section 103(b). In 2007, the Corps requested, and received from EPA Region 6, a 5-year extension for the continued use of the MPRSA Section 103(b) ODMDS-West. The approval for ODMDS-West use is scheduled to expire in August 2012, at which time it can no longer receive shoal material dredged from the ARBC unless it is re-designated as a MPRSA Section 102(c) site by EPA.

Following the MPRSA Section 103(b) designation of the ODMDS-West in 2002, the Corps Engineering Research and Development Center, performed monitoring studies to determine if placing maintenance-dredged material on the west side of the ARBC was more effective at reducing shoaling in the channel, thus, reducing the dredging frequency and costs. These studies found that while placing material on the west side of the ARBC did not eliminate shoaling, it did reduce the rate of shoal material runback into the channel, when compared to placing material on the east

side of the channel. These findings were corroborated by the results of more recent studies on sediment transport in the project area performed on behalf of the Corps in 2006.

Need for Action: The Corps has requested the permanent, Section 102(c) designation of the ODMDS-West for the disposal of maintenance-dredged material from the ARBC when ocean disposal is the preferred disposal alternative. Placement of dredged material at the ODMDS-West would reduce the amount and rate of shoal material runback into the ARBC (i.e., reduce the shoaling rate), and thus, decrease the overall annual maintenance dredging effort needed for the ARBC while providing vessels with a longer period of safe navigation access between maintenance dredging events. An EIS is required to provide the necessary information to evaluate alternatives and designate the preferred ODMDS.

Alternatives: ''No action'' alternative. The no action alternative is defined as not designating an ocean disposal site. Additional alternatives under consideration include: Non-ocean (beneficial use) placement alternatives; Nearshore Area Disposal Site; Mid-shelf Area Disposal Site; and a Deepwater Area Disposal Site.

Scoping: Scoping will be accomplished by correspondence with affected Federal, State, and local agencies, and with anticipated interested parties. Appropriate Federal, State, and local entities will be invited to participate as a cooperating agency. Scoping will be initiated with the distribution of a scoping input request letter. If, based on the results of the comments received from the public scoping letter, there are identified significant interests and concerns expressed by the public, a public meeting may be needed.

Estimated Date of Release: The Draft EIS will be made available in December 2011.

Dated: July 8, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–18417 Filed 7–20–11; 8:45 am]

BILLING CODE 6560–50–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.: 011689–013.

Title: Zim/CSCL Slot Charter Agreement.

Parties: Zim Integrated Shipping Services, Ltd.; China Shipping Container Line Co., Ltd.; and China Shipping Container Lines (Hong Kong) Co., Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1627 I Street, NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment revises the parties' allocation under the Agreement.

Agreement No.: 012133.

Title: Mitsui O.S.K. Lines/Kawasaki Kisen Kaisha Space Charter Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd. and Mitsui O.S.K. Lines, Ltd.

Filing Party: John P. Meade, *Esq.;* General Counsel; K-Line America, Inc.; 6009 Bethlehem Road; Preston, MD 21655.

Synopsis: The agreement authorizes the parties to charter space in the trade between ports on the U.S. East coast and Japan.

By order of the Federal Maritime Commission.

Dated: July 15, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–18316 Filed 7–20–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System, Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before September 19, 2011.

ADDRESSES: You may submit comments, identified by *Reg BB* by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below. Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision of the Following Information Collection

Report title: The Recordkeeping, Reporting and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment Act (CRA)).

Agency form number: Reg BB.

OMB control number: 7100–0197.

Frequency: Annually.

Reporters: State member banks (SMBs).

Annual reporting hours: 52,127 hours.

Estimated average hours per response: Recordkeeping Requirement, small business and small farm loan register, 219 hours. Optional Recordkeeping Requirements, consumer loan data, 326 hours and other loan data, 25 hours. Reporting Requirements, assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; and HMDA out of MSA loan data, 253 hours. Optional Reporting Requirements, data on lending by a consortium or third party, 17 hours; affiliate lending data, 38 hours; strategic plan, 275 hours; and request for designation as a wholesale or limited purpose bank, 4 hours. Disclosure Requirement, public file, 10 hours.

Number of respondents: Recordkeeping Requirement, small business and small farm loan register, 72. Optional Recordkeeping Requirements, consumer loan data, 24 and other loan data, 4. Reporting Requirements, assessment area delineation, 72; small business and small farm loan data, 72; community development loan data, 72; and HMDA out of MSA loan data, 72. Optional Reporting Requirements, data on lending by a consortium or third party, 6; affiliate lending data, 4; strategic plan, 1; and request for designation as a wholesale or limited purpose bank, 1. Disclosure Requirement, public file, 803.

General description of report: This information collection is authorized by section 806 of the CRA which permits the board to issue regulations to carry out the purpose of CRA (12 U.S.C. 2905), Section 11 of the Federal Reserve Act (FRA), which permits the Board to require such statements as reports of SMBs as it deems necessary (12 U.S.C. 248(a)(1)), and section 9 of the FRA, which permits the Board to examine SMBs (12 U.S.C. 325). The requirements are generally mandatory, depending on bank size and other factors. The data that are reported to the Federal Reserve are not considered confidential.

Abstract: This submission covers an extension of the Federal Reserve's currently approved information collections in their CRA regulations (12 CFR Part 228). The submission involves no change to the regulation or to the information collection.

The Federal Reserve System needs the information collected to fulfill their obligations under the CRA to evaluate and assign ratings to the performance of institutions in connection with helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. The Federal Reserve System uses the information in the examination process and in evaluating applications for mergers, branches, and certain other corporate activities. Financial institutions maintain and provide the information to the Federal Reserve System.

Board of Governors of the Federal Reserve System, July 15, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–18339 Filed 7–20–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 21–22, 2011

In accordance with Section 271.25 of its rules regarding availability of information (12 CFR Part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 21–22, 2011.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee seeks conditions in reserve markets consistent with Federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to complete purchases of $600 billion of longer-term Treasury securities by the end of this month. The Committee also directs the Desk to maintain its existing policy of reinvesting principal payments on all domestic securities in the System Open Market Account in Treasury securities in order to maintain the total face value of domestic securities at approximately $2.6 trillion. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, July 13, 2011.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2011–18430 Filed 7–20–11; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on June 21–22, 2011, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's Annual Report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Announcement of Expansion Supplement Grant Awards

AGENCY: Administration for Native Americans, ACF, HHS.

ACTION: Notice to 10 Expansion Supplement Awards to implement the First Lady's *Let's Move! in Indian Country (LMIC)* initiative.

CFDA#: 93.612.

Statutory Authority: The awards will be made pursuant to Section 803 of the Native American Programs Act of 1974.

Amount of Award: Ten awards for a total of $193,437.

Project Period: May 2011—September 30, 2011.

SUMMARY: The Administration for Children and Families (ACF), Administration for Native Americans (ANA), announces the award of ten expansion supplement awards to Native American Tribes that are currently combating the epidemic of health issues in Native America. Expansion supplement funds will support activities associated with the First Lady's initiative, *Let's Move! in Indian Country.* Under the program, grantee Tribes have set forth goals and milestones that will benefit Native youth, children, and families.

The following projects will be supported by the expansion supplement awards:

- Native Village of Afognak, Kodiak, AK ($20,000). The project will include *Let's Move!* activities as part of their summer youth camps.
- Pueblo of Tesuque, Santa Fe, NM ($20,025). The project will include *Let's Move!* activities in its existing project of building a comprehensive prevention and early intervention program that is focused on building community member awareness of, and ability to, confront challenges.
- Riverside-San Bernardino County Indian Health, Inc., Banning, CA ($20,000). The project will include healthy living and healthy lifestyles of the *Let's Move!* initiative in its already existing project that focuses on providing pre-marital, dating violence and communication education. The project also provides pre-marital education to pregnant and parenting adolescents.
- Yerington Paiute Tribe, Yerington, NV ($19,034). This project will include *Let's Move!* activities that support the development of a family/community wellness support system. The system provides prevention, intervention, referral and follow-up services to community members.
- Cornerstone Ministries, Inc., Crownpoint, NM ($20,001). This project will implement *Let's Move!* activities in its project to increase the awareness and value of healthy families and will include activities in its training of youth workers to conduct relationship education.
- Eastern Shawnee Tribe of Oklahoma, Wyandotte, OK ($17,490). This project will include *Let's Move!* activities in its project to encourage healthy eating and exercise to reduce the rate of diabetes among elderly tribal members.
- Leech Lake, Cass Lake, MN ($19,999). This project will include *Let's Move!* activities in its project to increase relevant academic and cultural content for an intensive in-service for teachers.
- Chickaloon Native Village, Chickaloon, AK ($16,948). This project will include *Let's Move!* activities in its project that encourages tribal governance and land stewardship of Chickaloon traditional lands by designing and implementing a trails and recreation planning, management, and ecotourism plan.
- White Earth Band of Chippewa, White Earth, MN ($19,940). This project will include *Let's Move!* activities in its project to improve child well-being and social stability by providing family support services to disadvantaged parents and their children.
- The American Indian Child Resource Center, Oakland, CA ($20,000). This project will include *Let's Move!* activities in its project to providing life skills training that fosters and promotes decision making, critical thinking, and independent living skills among young Native Americans living in urban environments.

FOR FURTHER INFORMATION CONTACT: Lillian A. Sparks, Commissioner, Administration for Native Americans, 370 L'Enfant Promenade, SW., Washington, DC 20047. *Telephone:* 877–922–9262 *E-mail: anacommissioner@acf.hhs.gov.*

Dated: July 13, 2011.

Kim Romine,

Intergovernmental Affairs Specialist, Administration for Native Americans.

[FR Doc. 2011–18377 Filed 7–20–11; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Committee Meeting via Conference Call

AGENCY: President's Committee for People With Intellectual Disabilities (PCPID).

ACTION: Notice.

DATES: Tuesday, August 16, 2011, from 1 p.m. to 2:30 pm E.S.T. This meeting, to be held via audio conference call, is open to the public.

Details for accessing the full Committee Conference Call are cited below:

Toll Free Dial-In Number: 800–779–1436.

Pass Code: PCPID.

Individuals who will need accommodations for a disability in order to participate in the PCPID Meeting via audio conferencing (assistive listening devices, materials in alternative format such as large print or Braille) should notify Genevieve Swift, PCPID Executive Administrative Assistant, at *Edith.Swift@acf.hhs.gov*, or by telephone at 202–619–0634, no later than Tuesday, August 9, 2011. PCPID will attempt to meet requests for accommodations made after that date, but cannot guarantee ability to grant requests received after this deadline.

Agenda: Committee members will discuss preparation of the PCPID 2011 Report to the President, including its content and format, and related data collection and analysis required to complete the writing of the Report.

Additional Information: For further information, please contact Laverdia Taylor Roach, President's Committee for People with Intellectual Disabilities, The Aerospace Center, Second Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Telephone: 202–619–0634.

Fax: 202–205–9519.

E-mail: LRoach@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: PCPID acts in an advisory capacity to the

President and the Secretary of Health and Human Services, through the Administration on Developmental Disabilities, on a broad range of topics relating to programs, services and supports for persons with intellectual disabilities. The PCPID Executive Order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide

advice to the President concerning the following for people with intellectual disabilities: (A) Expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Dated: July 15, 2011.

Laverdia Taylor Roach,

Director, President's Committee for People with Intellectual Disabilities.

[FR Doc. 2011–18392 Filed 7–20–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0530]

Draft Guidance for Industry and Food and Drug Administration Staff; Mobile Medical Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Mobile Medical Applications.'' FDA is issuing this draft guidance to inform manufacturers, distributors, and other entities about how the FDA intends to apply its regulatory authorities to select software applications intended for use on mobile platforms (mobile applications or ''mobile apps''). At this time, FDA intends to apply its regulatory requirements solely to a subset of mobile apps that the Agency is calling mobile medical applications (mobile medical apps). This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 19, 2011

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Mobile Medical Applications'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For devices regulated by CDRH: Bakul Patel, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5456, Silver Spring, MD 20993–0002, 301–796–5528.

For devices regulated by CBER: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852, 301–827–6210.

I. Background

Given the rapid expansion and broad applicability of mobile apps, FDA is issuing this draft guidance to clarify the types of mobile apps to which FDA intends to apply its authority. At this time, FDA intends to apply its regulatory requirements to a subset of mobile apps that the Agency is calling mobile medical apps. For purposes of this guidance, a ''mobile medical app'' is defined as a mobile app that meets the definition of ''device'' in section 201(h) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321);[1] and either:

- Is used as an accessory to a regulated medical device or
- Transforms a mobile platform into a regulated medical device.

This narrowly-tailored approach focuses on a subset of mobile apps that either have traditionally been considered medical devices or affect the performance or functionality of a currently regulated medical device.

Although some mobile apps that do not meet the definition of mobile medical app may meet the FD&C Act's definition of a device, the FDA intends to exercise enforcement discretion[2] towards those mobile apps.

We welcome comments on all aspects of this guidance as well as the following specific issues:

1. FDA generally considers extensions of medical devices as accessories to those medical devices. Accessories have been typically regulated under the same classification as the connected medical device. However, we recognize potential limitations to this policy for mobile medical apps. FDA seeks comments on how the Agency should approach accessories and particularly mobile medical apps that are accessories to other medical devices so safety and effectiveness can be reasonably assured. For example, one possible approach could be the following:

- An accessory that does not change the intended use of the connected device, but aids in the use of the connected medical device could be regulated as class I. For example, such an accessory would be similar to an infusion pump stand, which is currently classified as a class I device because it supports the intended use of an infusion pump (class II medical device). A mobile medical app that simply supports the intended use of a regulated medical device could be classified as class I with design controls as part of the quality systems requirements.
- An accessory that extends the intended use of the connected medical device could be classified with the connected device. For example, if a mobile medical app that performs more detailed analysis than the connected medical device while maintaining the original intended use, which is data analysis, could be classified in the same classification as the connected medical device.
- An accessory that creates a new intended use from that of the connected

[1] Products that are built with or consist of computer and/or software components or applications are subject to regulation as devices when they meet the definition of a device in section 201(h) of the FD&C Act. That provision defines a device as ''* * * an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent * * *,'' that is ''* * * intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man * * *'' or '' * * * intended to affect the structure or any function of the body of man or other animals * * *.''

[2] This means that FDA intends to exercise its discretion to decline to pursue enforcement actions for violations of the FD&C Act and applicable regulations by a manufacturer of a mobile medical app, as specified in this guidance. This does not constitute a change in the requirements of the FD&C Act or any applicable regulations.

device(s) could be classified according to the risk posed to patient safety by the new intended use, for example, if the intended use of a mobile medical app is to provide prognosis relating to a certain disease or condition and the mobile medical app is connected to a device that does not have that intended use, the mobile medical app may have a different level of risk than the connected device, resulting in a different classification to assure of safety and effectiveness of the mobile medical app.

2. FDA has not addressed in this guidance stand-alone software (mobile or traditional workstation) that analyzes, processes, or interprets medical device data (collected electronically or through manual entry of the device data) for purposes of automatically assessing patient specific data or for providing support in making clinical decisions. FDA plans to address such stand-alone software in a separate guidance. In order to provide a reasonable assurance of the safety and effectiveness of such software, and to ensure consistency between this guidance and the planned guidance on stand-alone software that provides clinical decision support (CDS), FDA is seeking comments on the following issues:

- What factors should FDA consider in determining the risk classification of different types of software that provide CDS functionality? Please provide examples of how those factors would be applied for such software that you believe should be in class I, class II, and class III.
- How should FDA assess stand-alone software that provides CDS functionality, to assure reasonable safety and effectiveness? For example, to what extent can FDA rely on a manufacturer's demonstration that it has a robust quality system with appropriate quality assurance and design controls? Under what circumstances should the submission of clinical data be required?
- Are there specific controls that manufacturers should implement that could change the risk classification or reduce the premarket data requirements for particular types of stand-alone software that provide CDS functionality?

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on mobile medical applications. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at either *http://www.regulations.gov* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* To receive ''Mobile Medical Applications'' from CDRH, you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1741 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved information collections found in FDA regulations. The collections of information in 21 CFR part 801 are approved under OMB control number 0910–0485; the collection of information in 21 CFR part 803 are approved under OMB control number 0910–0437; the collections of information in 21 CFR part 806 are approved under OMB control number 0910–0359; the collections of information in 21 CFR part 807, subpart B, are approved under OMB control number 0910–0387; the collections of information in 21 CFR part 807, subpart E, are approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 820 are approved under OMB control number 0910–0073.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 18, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–18537 Filed 7–19–11; 4:15 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0149] (Formerly 2007D–0309)

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Electrocardiograph Electrodes; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Electrocardiograph Electrodes.'' The special controls identify the following risks to health associated with electrocardiograph electrodes: Adverse tissue reaction to the skin-contacting electrode materials and misdiagnosis. The guidance document provides information on how to mitigate these risks and recommends testing and labeling for these devices. This guidance document describes a means by which electrocardiograph electrodes may comply with the requirement of special controls for class II devices.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Class II Special Controls Guidance Document: Electrocardiograph Electrodes'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. *See* the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the

Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Sharon Lappalainen, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1238, Silver Spring, MD 20993–0002, 301–796–6322.

SUPPLEMENTARY INFORMATION:

I. Background

The guidance describes a means by which electrocardiograph electrodes may comply with the requirement of special controls for class II devices. In the **Federal Register** of October 4, 2007 (72 FR 56771), and Docket No. FDA–2007D–0309, FDA proposed to classify electrocardiograph electrodes, intended to acquire and transmit the electrical signal at the body surface to a processor that produces an electrocardiogram (ECG) or vectorcardiogram, into class II. FDA also proposed to exempt this device from premarket notification requirements and issued a draft guidance document to describe the special control requirements. FDA invited interested persons to comment on the proposed regulation and the draft guidance document by January 8, 2008. FDA received seven comments on the proposed rule. These comments addressed issues pertaining to labeling, the scope of the devices subject to the classification rule, and testing. In response, FDA has revised the labeling section of the guidance, has clarified the scope of the guidance, and has clarified the information regarding testing for shelf life. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify electrocardiograph electrodes into class II (special controls) and to exempt the device from 510(k) premarket notification procedures.

II. Significance of Special Controls Guidance Document

FDA believes that adherence to the recommendations described in this guidance document, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of electrocardiograph electrodes classified under § 870.2360 (21 CFR 870.2360). In order to be classified as a class II device under § 870.2360, an electrocardiograph electrode must comply with the requirements of special controls; manufacturers must address the issues requiring special controls as identified in the guidance document, either by following the recommendations in the guidance document or by some other means that provides equivalent assurances of safety and effectiveness.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.*

To receive ''Class II Special Controls Guidance Document: Electrocardiograph Electrodes,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a paper copy. Please use the document number (#1597) to identify the guidance you are requesting.

IV. Paperwork Reduction Act

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 18, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–18390 Filed 7–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0495]

Unique Device Identification for Postmarket Surveillance and Enforcement; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop on the adoption, implementation, and use of unique device identifiers (UDIs) in various health-related electronic data systems. The purpose of this workshop is to engage multiple stakeholders to obtain information and comments on issues confronting the effective and efficient incorporation of UDIs into appropriate data sets, to identify barriers and incentives to their adoption and use, and to understand the best solutions and practices to resolve open issues.

Dates and Times: The public workshop will be held on September 12, 2011, from 1 to 5 p.m. and on September 13, 2011, from 9 a.m. to 5 p.m. Submit electronic and written comments by October 13, 2011.

Location: The public workshop will be held at the Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Road, Bethesda, MD 20852; 301–822–9200.

Contact Person: Jay Crowley, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, 301–980–1936, e-mail: *jay.crowley@fda.hhs.gov*

Registration: Registration is free and will be on a first-come, first-served basis. To register for the public workshop—whether attending in person or for the Web cast—please visit *http://www.fda.gov/UDI* (or go the FDA Medical Devices News & Events—Workshops & Conferences calendar and select this public workshop from the posted events list). Please provide complete contact information for each attendee, including name, title, affiliation, address, e-mail, and telephone number. For those without Internet access, please contact Jay Crowley (see Contact Person) to register. Registration requests should be received by 5 p.m. on September 5, 2011. Early registration is recommended because seating is limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the

day of the public workshop will be provided beginning at 11 a.m.

Hotel reservations can be made by calling the hotel and requesting the group rate for the ''FDA UDI Public Workshop'' room block.

If you need special accommodations due to a disability, please contact Jay Crowley (*jay.crowley@fda.hhs.gov*) at least 7 days in advance.

The meeting will also be Web cast. Persons interested in participating by Web cast must register online by 5 p.m. on September 5, 2011. Web cast participants will be sent connection requirements. More information on the Web cast can be found on our Web site at *http://www.fda.gov/UDI*.

By August 12, 2011, and then as available, FDA will post the workshop agenda and discussion topics, registration information, information about lodging, and other relevant information on the Internet at *http://www.fda.gov/UDI*.

Comments: Regardless of attendance at the public workshop, interested persons may submit either electronic or written comments by October 13, 2011. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

Section 226 of the Food and Drug Administration Amendments Act of 2007 (FDAAA) directs FDA to issue regulations establishing a UDI system for medical devices. FDA is developing proposed regulations to establish this UDI system to strengthen and improve FDA's enforcement of other statutory authorities and improve the identification of devices through distribution and use. This workshop will not address the FDA's UDI regulatory framework. However, UDI systems have been under development for some years by the U.S. and global device industry and some device manufacturers have been incorporating UDI into their product labeling and packaging. See *http://www.fda.gov/UDI* for more information about UDI.

FDA is also leading an effort to develop and implement a national strategy for the best public health use of health-related electronic data related to devices that incorporates UDIs, including registries, and leverages existing processes and systems. Health-related data (from large data sources such as health insurers and integrated health systems, and others) contains a wealth of public health information that could be harnessed to contribute to understanding device safety and effectiveness. Currently, however, these data generally cannot be used to identify specific device exposures in patients. This is not the case for drug exposure, where the regular documentation of NDC numbers allows for robust analysis of pharmaceutical safety and effectiveness. Absent such information for devices, a vast amount of potentially useful data regarding patient safety and outcomes remains untapped.

The incorporation of UDI into various health-related databases will greatly facilitate many important public health-related activities including:

- Reducing medical errors,
- Reporting and assessing device-related adverse events and product problems,
- Tracking of recalls,
- Assessing patient-centered outcomes and the risk/benefit profile of medical devices in large segments of the U.S. population,
- Providing an easily accessible source of device identification information to patients and health care professionals.

The incorporation of UDI into various health-related databases would also greatly expand Sentinel Initiative capabilities to conduct active device surveillance given that Sentinel device data sources are currently limited to a few registries capturing short-term patient outcomes. FDA's Sentinel Initiative, on the Internet at *http://www.fda.gov/Safety/FDAsSentinelInitiative/default.htm,* seeks to establish ''a national electronic system that will transform FDA's ability to track the safety of drugs, biologics, medical devices—and ultimately all FDA-regulated products once they reach the market'' and ''aims to develop and implement a proactive system that will complement existing systems that the Agency has in place to track reports of adverse events linked to the use of its regulated products.'' (Please note that this workshop will NOT address FDA's oversight of EHRs.)

II. Topics for Discussion at the Public Workshop

This public workshop is intended to engage multiple stakeholders to inform FDA's efforts to promote and facilitate incorporation of UDIs into healthcare systems, obtain actionable information on the issues surrounding effective and efficient incorporation of UDIs into health-related electronic records, and understand best solutions and practices. To that end, we will focus on the following issues:

A. Documenting Device Use Using UDIs in Electronic Health Records

1. The current state of documentation of device use in health-related databases, including EHRs.
2. The barriers to, and various possible incentives for, the development, implementation and use of UDI in EHR systems.
3. The possible roles and activities of various government stakeholders (including FDA, CMS, ONC, and NLM) necessary to drive the adoption and use of UDIs in EHRs and other health-related databases.
4. Any other issues or concerns that would affect the efficient and effective incorporation of UDIs in EHRs and other health-related data.

B. The Role of UDI in Device Registries

5. The current state of documentation of device use in registries.
6. The future vision for device registries using UDI.
7. How EHRs and other, similar population-based databases can be used to provide registries or registry-like data.
8. Any technical issues confronting the effective and efficient incorporation of UDIs into appropriate data sets.

C. UDI's Role in National and Local Data Standards

9. The current state of Health IT data standards in EHRs.
10. The future vision for use of standards in EHRs to improve data quality and data exchange.
11. The activities of the Health IT Standards Panel and its relationship to Meaningful Use.
12. The relationship of data standards to UDI integration in hospital systems.

D. Integrating UDI Throughout Hospital Systems

13. The particular issues associated with networked devices that need to be considered.
14. The issues and challenges with device interoperability.
15. The current and future state of MMIS and RTLS systems to support safe device use.
16. How other information systems are adopting and implementing UDI and how these systems are integrating with other clinical information systems to transmit the appropriate data.

E. The Role of UDI in Postmarket Surveillance and Compliance

17. How we can use UDIs in health-related electronic data systems to improve post-approval studies.

18. How the documentation of UDIs can be used to improve the conduct of recalls.

19. The issues associated with the use of UDI in claims data sources.

20. How adverse event reporting can be improved.

21. Other postmarket surveillance and enforcement activities that can be improved through the documentation of UDIs in these databases.

F. UDIs in Personal Health Records

22. The device information currently being transmitted from the EHR to a patient's PHR.

23. Any lessons learned that can be applied from documenting medication use.

24. How the documentation of UDI in patients' PHRs can be used for postmarket surveillance, enforcement activities and to improve device use.

25. Any differences in documentation and tracking of device use needed for different care settings (*e.g.,* hospital, outpatient clinic, and home) and different device types (*e.g.,* implants, home/patient use) that need to be considered.

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857. A link to the transcripts will also be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm257194.htm* (or go to *http://www.fda.gov* and select this public workshop from the posted events list), approximately 45 days after the public workshop.

Dated: July 15, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–18369 Filed 7–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0477]

Standard Operating Procedure for ''Notice to Industry'' Letters

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the standard operating procedure (SOP) for ''Notice to Industry'' Letters. The SOP describes the Center for Devices and Radiological Health's (CDRH) process to clarify and more quickly inform stakeholders when CDRH has changed its expectations relating to, or otherwise has new scientific information that could affect, data submitted as part of an Investigational Device Exemption (IDE) or premarket submission that needs to be disseminated in a timely manner.

DATES: The Agency encourages interested parties to submit information and either electronic or written comments by September 19, 2011.

ADDRESSES: Submit electronic comments or information to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Angela Krueger, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1666, Silver Spring, MD 20993, 301–796–6380, *e-mail: angela.krueger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Task Force on the Utilization of Science in Regulatory Decision Making (the Task Force) published a Preliminary Report and Recommendations in August 2010. In the report, the Task Force noted that when new scientific information changes CDRH's regulatory thinking, it has been challenging for the Center to communicate the change and its basis to all affected parties in a meaningful and timely manner. The Task Force recommended that the Center make use of more rapid tools for broad communication on regulatory matters, including establishing a standard practice for sending ''Notice to Industry'' Letters to all manufacturers of a particular group of devices for which the Center has changed its expectations for data submitted as part of an IDE or premarket application on the basis of new scientific information.

Currently, manufacturers typically learn of changes CDRH implements at the time of or soon after a decision is made through individual engagement with the Center, often not until after they have prepared a premarket submission. Reviewers may implement these changes, such as requesting new clinical data or using a new test method, on a case by case basis, with immediate supervisory concurrence when it is necessary to protect the public health. For example, a reviewer may request that sponsors test their implantable device for durability because new data demonstrates that this type of device is prone to failure due to premature wear and tear of the technology. Although CDRH may issue a detailed guidance document, the document may not be published until a year or more after a branch- or division-level decision has been made to request the information because of the resource constraints in developing guidance documents.

Therefore, CDRH believes that timely communication with industry about changes in regulatory expectations or new scientific information is important. The Task Force recommended that CDRH use ''Notice to Industry'' Letters in these circumstances, although not required, and adopt a uniform template and terminology for such letters, including clear and consistent language to indicate that the Center has changed its regulatory expectations, the general nature of the change, and the rationale for the change. The Task Force contemplated that CDRH could potentially issue ''Notice to Industry'' Letters, if such letters constitute guidance, as ''Level 1—Immediately in Effect'' guidance documents under 21 CFR 10.115(g)(2), and would open a public docket upon their issuance through a notice of availability in the **Federal Register**.

This SOP was developed to address this recommendation from the Task Force. Where appropriate, CDRH will communicate new expectations as ''Notice to Industry'' Guidance Letters, which will comply with Good Guidance Practices, or CDRH will communicate other new scientific information as ''Notice to Industry'' Advisory Letters. The Center will post both types of ''Notice to Industry'' Letters on its Web site, and will also use additional methods for distributing the Letters to identified stakeholders. When CDRH issues a ''Notice to Industry'' Guidance Letter concerning a change in premarket expectations that will affect pending

submissions, the Center will generally specify an additional amount of time for sponsors of those submissions to address the new issues. Where appropriate, ''Notice to Industry'' Guidance Letters would be followed as quickly as possible by new or revised guidance explaining the Center's new regulatory expectations (if any) in greater detail and revising the guidance where necessary in response to comments received, so that external constituencies have a fuller understanding of the Center's current regulatory thinking.

II. Submission of Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 15, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–18387 Filed 7–20–11; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Cystic Fibrosis, Lung Fibrosis, and Lung Innate Immunity Applications.

Date: August 8, 2011.

Time: 9 a.m. to 12 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: Everett E Sinnett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18420 Filed 7–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuroimaging.

Date: August 9, 2011.

Time: 12 p.m. to 1 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: Eduardo A Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Special Emphasis Panel.

Date: August 23, 2011.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Rass M Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@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: July 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18418 Filed 7–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Diabetes Mellitus Interagency Coordinating Committee; Notice of Meeting

The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on August 1, 2011, from 8:30 a.m. to 11:30 p.m. at the Bethesda Marriott Suites, 6711 Democracy Blvd, Bethesda, MD 20817. The meeting is open to the public but attendance is limited to space available. Non-Federal individuals planning to attend the meeting should notify the Contact Person listed on this notice at least 2 days prior to the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 10 days in advance of the meeting.

The DMICC facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The August 1, 2011, DMICC meeting will discuss ''Guides and Guidelines.''

Any member of the public interested in presenting oral comments to the Committee should notify the Contact Person listed on this notice at least 10

days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to a maximum of five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first come, first serve basis.

A registration link and information about the DMICC meeting will be available on the DMICC Web site: *http://www.diabetescommittee.gov*. Members of the public who would like to receive e-mail notification about future DMICC meetings could register on a listserv available on the same Web site.

For further information concerning this meeting contact Dr. Sanford Garfield, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 654, MSC 5460, Bethesda, MD 20892–5460, *Telephone:* 301–594–8803 FAX: 301–402–6271, *E-mail: dmicc@mail.nih.gov*.

Dated: July 13, 2011.

Sanford Garfield,

Executive Secretary, DMICC, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, National Institutes of Health.

[FR Doc. 2011–18422 Filed 7–20–11; 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: Networking Suicide Prevention Hotlines—Evaluation of the Lifeline Policies for Helping Callers at Imminent Risk (NEW)

This proposed project is a new data collection that builds on previously approved data collection activities [Evaluation of Networking Suicide Prevention Hotlines Follow-Up Assessment (OMB No. 0930–0274) and Call Monitoring of National Suicide Prevention Lifeline Form (OMB No. 0930–0275)]. This new data collection is an effort to advance the understanding of crisis hotline utilization and its impact. The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) funds a National Suicide Prevention Lifeline Network (''Lifeline''), consisting of a toll-free telephone number that routes calls from anywhere in the United States to a network of local crisis centers. In turn, the local centers link callers to local emergency, mental health, and social service resources.

The overarching purpose of the proposed Evaluation of the Lifeline Policies for Helping Callers at Imminent Risk is to implement data collection to evaluate hotline counselors' management of imminent risk callers and third party callers concerned about persons at imminent risk, and counselor adherence to *Lifeline Policies and Guidelines for Helping Callers at Imminent Risk of Suicide.* Specifically, the Evaluation of the Lifeline Policies for Helping Callers at Imminent Risk will collect data, using an imminent risk form, to inform the network's knowledge of the extent to which counselors are aware of and being guided by the Lifeline's imminent risk guidelines; counselors' definitions of imminent risk; the rates of active rescue of imminent risk callers; types of rescue; barriers to intervention; and the circumstances in which active rescue is initiated, including the caller's agreement to receive the intervention.

Clearance is being requested for *one activity* to assess the knowledge, actions, and practices of counselors to aid callers who are determined to be at imminent risk for suicide and who may require active rescue. This evaluation will allow researchers to examine and understand the actions taken by counselors to aid imminent risk callers, the need for active rescue, and, ultimately, to improve the delivery of crisis hotline services to imminent risk callers. A total of eight centers will participate in this evaluation. Thus, SAMHSA is requesting OMB review and approval of the National Suicide Prevention Lifeline—Imminent Risk Form. This activity is distinct from the Crisis Center Survey data collection, which targets the entire network of crisis centers and focuses on a different domain of questions (specifically, the makeup, strengths, and needs of crisis centers.) The information gathered from the Crisis Center Survey cannot provide a profile of imminent risk callers or details about interventions with imminent risk or third party callers.

Crisis counselors at eight participating centers will record information discussed with imminent risk callers on the Imminent Risk Form, which does not require direct data collection from callers. As with previously approved evaluations, callers will maintain anonymity. Counselors will be asked to complete the form for 100% of imminent risk callers to the eight centers participating in the evaluation. This form requests information in 14 content areas, each with multiple sub-items and response options. Response options include open-ended, yes/no, Likert-type ratings, and multiple choice/check all that apply. The form also requests demographic information on the caller, the identification of the center and counselor submitting the form, and the date of the call. Specifically, the form is divided into the following sections: (1) Call type, (2) gender, (3) age, (4) suicidal desire, (5) suicidal intent, (6) suicidal capability, (7) buffers to suicide, (8) interventions agreed to by caller or implemented by counselor without consent, (9) whether imminent risk was reduced enough such that active rescue was not needed, (10) interventions for third party callers calling about a person at imminent risk,

(11) if supervisory consultation occurred, (12) barriers to getting needed help to the person at imminent risk, (13) steps taken to confirm emergency contact was made with person at risk, and (14) steps taken when emergency contact was NOT made with person at risk. The form will take approximately 15 minutes to complete and may be completed by the counselor during or after the call. It is expected that a total of 1,440 forms will be completed by 360 counselors over the two-year data collection period.

The estimated response burden to collect this information is annualized over the requested two-year clearance period and is presented below:

TOTAL AND ANNUALIZED AVERAGES—RESPONDENTS, RESPONSES AND HOURS

Instrument	Number of respondents	Responses/ respondent	Total responses	Hours per response	Total hour burden
National Suicide Prevention Lifeline—Imminent Risk Form	360	2	720	.25	180

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: July 14, 2011.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–18371 Filed 7–20–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0012]

Nationwide Cyber Security Review (NCSR) Assessment

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; New Information Collection Request.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Cybersecurity and Communications (CS&C), National Cyber Security Division (NCSD), Cyber Security Evaluation Program (CSEP), will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35): New Information Collection Request, Nationwide Cyber Security Review (NCSR) Assessment. DHS previously published this ICR in the **Federal Register** on April 21, 2011, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 22, 2011. This process is conducted in accordance with 5 CFR 1320.10.

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 OMB Desk Officer, Department of Homeland Security, Office of Civil Rights and Civil Liberties. Comments must be identified by DHS–2011–0012 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Michael Leking, DHS/NPPD/CS&C/NCSD/CSEP, *Michael.Leking@dhs.gov.*

SUPPLEMENTARY INFORMATION: Per House Report 111–298 and Senate Report 111–31, *Department of Homeland Security Appropriations Bill,* NPPD, in cooperation with FEMA and relevant stakeholders, shall develop the necessary tools for all levels of government to complete a cyber network security assessment so that a full measure of gaps and capabilities can be completed. The NCSR will be conducted via the United States Computer Emergency Readiness Team (US–CERT) Secure Portal. The assessment stakeholders will be states and major urban areas. The NCSR is a voluntary self-assessment designed to measure cybersecurity preparedness and resilience. Through the NCSR, CSEP will examine relationships, interactions, and processes governing IT management and the ability to effectively manage operational risk.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Cybersecurity and Communications, National Cyber Security Division, Cyber Security Evaluation Program.

Title: Nationwide Cyber Security Review (NCSR) Assessment.

OMB Number: 1670–NEW.

Frequency: Annually.

Affected Public: Chief Information Officers, Chief Information Security Officers, Chief Technology Officers, and IT security personnel within states and large urban areas.

Number of Respondents: 750 respondents (estimate).

Estimated Time per Respondent: 2 hours.

Total Burden Hours: 1,500 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0 (This assessment resides on the US-CERT Portal, and there is no cost associated

with the recordkeeping of NCSR-related information.)

Total Burden Cost (operating/maintaining): $36,630.

Dated: July 12, 2011.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–18414 Filed 7–20–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket ID No. BOEM–2011–0001]

BOEMRE Information Collection Activity: Coastal Impact Assistance Program (CIAP), Renewal of a Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of extension of an information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements that address the BOEMRE's Coastal Impact Assistance Program (CIAP), which is a grant program. This notice also provides the public a second opportunity to comment on the paperwork burden of these requirements.

DATES: Submit written comments by August 22, 2011.

ADDRESSES: Submit comments by either fax (202) 395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0170). Please also submit a copy of your comments to BOEMRE by any of the means below.

- *Electronically:* Go to *http://www.regulations.gov.* In the entry titled, ''Enter Keyword or ID,'' enter BOEM–2011–0001 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEMRE will post all comments.
- *E-mail: cheryl.blundon@boemre.gov.* Mail or hand-carry comments to: Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; *Attention:* Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0170 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

Title: Coastal Impact Assistance Program.

OMB Control Number: 1010–0170.

Abstract: With the passage of the Energy Policy Act of 2005 (EPAct), the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) was given responsibility for the Coastal Impact Assistance Program (CIAP) through the amendment of Section 31 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a Appendix A). The following requirements from this amendment necessitate the collection of information.

''(d) AUTHORIZED USES.—

(1) IN GENERAL.—A producing State or coastal political subdivision shall use all amounts received under this section, including any amount deposited in a trust fund that is administered by the State or coastal political subdivision and dedicated to uses consistent with this section, in accordance with all applicable Federal and State law, only for 1 or more of the following purposes:

(A) Projects and activities for the conservation, protection, or restoration of coastal areas, including wetland.

(B) Mitigation of damage to fish, wildlife, or natural resources.

(C) Planning assistance and the administrative costs of complying with this section.

(D) Implementation of a federally-approved marine, coastal, or comprehensive conservation management plan.

(E) Mitigation of the impact of outer Continental Shelf activities through funding of onshore infrastructure projects and public service needs.

(2) COMPLIANCE WITH AUTHORIZED USES.—If the Secretary determines that any expenditure made by a producing State or coastal political subdivision is not consistent with this subsection, the Secretary shall not disburse any additional amount under this section to the producing State or the coastal political subdivision until such time as all amounts obligated for unauthorized uses have been repaid or reobligated for authorized uses.

(3) LIMITATION.—Not more than 23 percent of amounts received by a producing State or coastal political subdivision for any 1 fiscal year shall be used for the purposes described * * *''

Information needs to be submitted by the government jurisdictions to meet all the requirements of the CIAP State Plan Guidelines as well as requirements on the procurement contracts. Responses are mostly required to obtain or retain a benefit. No questions of a ''sensitive'' nature are asked. BOEMRE protects information considered proprietary according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2).

According to the EPAct, in order to receive funds, the states must submit CIAP State Plans that contain required components including an implementation plan of the state's program and identification of the proposed use of CIAP funds. The identification will be provided in the Plan as brief descriptions of the proposed projects. Upon approval of a Plan, recipients will be able to submit grant applications for a project. Applicants submit proposals for funding in response to a Notice of Funding Availability that we publish on Grants.gov and on our program web pages. Proposals are submitted through Grants.gov. An application consists of OMB required forms for grants; a detailed project description or narrative to demonstrate that the project has maintained the integrity of the brief description in the Plan and still meets EPAct criteria; and documentation such as Federal, State, or local government required permits with which the recipient is stating it has met Federal, State, or local laws.

Once an application for a project is approved, BOEMRE is required to monitor the projects to determine that the CIAP funds are being used for appropriate expenses. The monitoring will be achieved through the grant regulations that require, at a minimum, a recipient to provide an annual progress and financial status reports. Recipients are evaluated by contracting officers via Grants.gov application efforts. The recipients that are determined by the evaluations to likely have difficulties in implementing and managing the CIAP funded projects will be required to submit semi-annual reports. Once the recipient has demonstrated the ability to implement and manage their projects, the requirement can be returned to annual reports.

BOEMRE needs the information required so that technical experts can determine how well it addresses the requirements identified in the authorizing EPAct legislation and monitor the projects to meet specific requirements.

Frequency: Submissions are annually, bi-annually, or specific to the requirement which is usually on occasion.

Description of Respondents: Approximately 73 total respondents. This includes 6 states and 67 boroughs, parishes, etc.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 13,587 hours. The following table details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

CIAP reporting and/or recordkeeping requirement	Hour burden	Average number of annual reponses	Annual burden hours
Submit Project Narrative	42	192 projects	8,064
Submit annual Performance Reports	8	192 reports	1,536
Submit bi-annual Performance Reports	8	192 reports	1,536
Notify BOEMRE in case of delays, adverse conditions, etc., which impair ability to meet objectives of the award including statement of action taken or contemplated or assistance required (including non-construction and construction grants).	8	45 notifications	360
Request termination and supporting information	6	15 requests	90
Retain all records/documentation for 3 years	.5	192 projects	96
Retain records longer than 3 years if they relate to claim, audit, litigation, etc	Exempt under 5 CFR 1320.4(a)(2), (c)		0
Telephone follow-up discussion on Financial Capabilities	8	76 discussions	608
Develop language and individual signage at CIAP Sites—Estimated 30 construction projects with temp signs initially—permanent signs 2–4years.	8	30 signs	240
Submission of photographs/CDs of projects for tracking purposes	4	250 projects	1,000
Voluntarily submit draft Coastal Impact Assistance Plan with appropriate supporting documentation.	1	4 plans	4
Submit final Coastal Impact Assistance Plan and all supporting documentation (i.e., Governor's certification of public participation; Appendices C, D, and E).	1	4 plans	4
Request delay by states for submitting final plan, with relevant data	1	1 request	1
Request minor changes and/or amendments to a plan	8	6 requests	48
Total Burden		1,199 Responses	13,587

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no paperwork non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on January 28, 2011, we published a **Federal Register** notice (76 FR 5192) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We have received no comments in response to this effort.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 22, 2011.

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.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: June 1, 2011.

Doug Slitor,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2011–18453 Filed 7–20–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–FHC–2011–N135; 53330–1335–0000–J3]

Lake Champlain Sea Lamprey Control Alternatives Workgroup

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a meeting of the Lake Champlain Sea Lamprey Control Alternatives Workgroup (Workgroup). The Workgroup's purpose is to provide, in an advisory capacity, recommendations

and advice on research and implementation of sea lamprey control techniques alternative to lampricide that are technically feasible, cost effective, and environmentally safe. The primary objective of the meeting will be to discuss potential research initiatives.

DATES: The Workgroup will meet on Monday, August 22, 2011, 10 a.m. to 1 p.m. Any member of the public who wants to find out whether the meeting has been postponed may contact Ms. Stefi Flanders at 802–872–0629, extension 10 (telephone), or *Stefi_Flanders@fws.gov* (e-mail) during regular business hours prior to the meeting date.

ADDRESSES: The meeting will be held at the Essex Town Hall, 2313 Main Street/Lakeshore Road, Essex, NY 12936; 518–963–4287 (telephone).

FOR FURTHER INFORMATION CONTACT: Dave Tilton, Designated Federal Officer, Lake Champlain Sea Lamprey Control Alternatives Workgroup, Lake Champlain Fish and Wildlife Resources Office, U.S. Fish and Wildlife Service, 11 Lincoln Street, Essex Junction, VT 05452 (U.S. mail); 802- 872–0629 (telephone); *Dave_Tilton@fws.gov* (e-mail). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 2006, the Department of the Interior published a notice of establishment of the Workgroup in the **Federal Register** (71 FR 18112) under the Federal Advisory Committee Act (5 U.S.C. App.). The Workgroup's specific responsibilities are to provide advice regarding the implementation of sea lamprey control methods alternative to lampricides, to recommend priorities for research on control methods alternative to lampricides, to recommend priorities for research to be conducted by cooperating organizations and demonstration projects to be developed and funded by State and Federal agencies, and to assist Federal and State agencies with the coordination of alternative sea lamprey control research to advance the state of the science in Lake Champlain and the Great Lakes.

Agenda

- Review of any proposals received and discussion of which, if any, to forward to the Fisheries Technical Committee of the Lake Champlain Fish and Wildlife Management Cooperative for funding.
- A presentation by William Ardren, Senior Fish Biologist, Lake Champlain Fish and Wildlife Resources Office, on potential for using Genetically Modified Organism (GMO) technology to control sea lamprey population size in Lake Champlain.

Meeting Location Information

The meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us at least 1 week in advance of the meeting.

Meeting Participation Information

All Committee meetings are open to the public. The public has an opportunity to comment at all Committee meetings.

Authority

We publish this notice under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.).

Dated: July 12, 2011.

James G. Geiger,

Acting Assistant Regional Director—Fisheries, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 2011–18375 Filed 7–20–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

List of Additional Lands Affected by White Earth Reservation Land Settlement Act of 1985

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice lists additional allotments or interest therein on the White Earth Chippewa Reservation in Minnesota which have been determined to fall within the scope of sections 4(a), 4(b), or 5(c) of the White Earth Reservation Land Settlement Act of 1985 (the Act). This notice is required by section 7(e) of the Act, as amended.

FOR FURTHER INFORMATION CONTACT: Robert Lintelmann, Acting Superintendent, Minnesota Agency, Bureau of Indian Affairs, 522 Minnesota Ave., NW., Bemidji, Minnesota 56601, Telephone (218) 751–2011.

SUPPLEMENTARY INFORMATION: The White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61) as amended by Public Law 100–153 (101 Stat. 886), Public Law 100–212 (101 Stat. 1433), and Public Law 101–301 (104 Stat. 210), provides for alternative methods of resolving disputes relative to the title to certain allotments for which trust patents were issued to White Earth Chippewa Indians. Sections 4(a) and 4(b) of the Act define circumstances by which the title to an allotment may have been taken or transferred through a questionable means during the trust period. The Act authorizes the Secretary of the Interior to: (1) Identify the allotments or interest therein which were taken or transferred under identified circumstances, (2) determine the individuals entitled to compensation pursuant to the Act, and (3) ascertain the amount of compensation to which each such individual is entitled. In addition, section 5(c) of the Act provides that the White Earth Band of Chippewa Indians shall be compensated for allotments which were granted to individuals who had died prior to the selection dates of their respective allotments.

Under section 8(a) of the Act, the compensation for the taking or transfer of an allotment or interest is to be based on the fair market value of the allotment or interest therein as of the date of such taking or transfer, less any consideration actually received at the time. The compensation to be paid under the Act shall include interest compounded annually at 5 percent from the date of the questionable taking or transfer, until March 24, 1986, and at the general rate of interest earned by Department of the Interior funds thereafter. The Secretary is authorized to issue written notices of compensation determination to the allottees or heirs entitled thereto. Such notice shall describe the basis for the Secretary's determination, the process by which such compensation was determined, the method of payment, and the applicable time limits for judicial review of the determination. Any individual who has already elected to file suit in the Federal District Court for the District of Minnesota to seek the recovery of title to an allotment or interest therein, or damages, is barred under section 6(c) from receiving any compensation under the Act.

The Secretary was authorized, pursuant to section 7(a) of the Act, to publish a first list of allotments or interests that fall within the provisions of sections 4(a), 4(b), or 5(c) of the Act. The first list of allotments and interests affected by the Act was published in the **Federal Register** on September 19, 1986. The Secretary was also authorized, pursuant to section 7(c) of the Act, to publish a second list of allotments and interests affected by the Act, including additions to those appearing on the first list. The amendment contained in Public Law 100–212 authorized the

Secretary to include and publish, as part of the second list, corrections to the first list. The list published in the **Federal Register** on March 10, 1989, corrected the September 19, 1986, publication. The March 10, 1989 publication did not contain tracts or/and interests that had been determined by the Department of the Interior to be outside the provisions of sections 4(a), 4(b), or 5(c) of the Act.

The Secretary is also authorized, at any time, pursuant to section 7(e)(1) of the Act, as amended, to add allotments or interests to the second list if the Secretary determined that the additional allotments or interests fall within the provisions of sections 4(a), 4(b), or 5(c). The first list of such additions was published in the **Federal Register** on March 27, 1991 (56 FR 12818). Since that time, two more lists of additions have been published. Those were published on April 11, 1994 (59 FR 17174), and on January 13, 2005 (70 FR 2423.) The list included herein contains more additions.

The list describes additional allotments and interests whether the takings or transfers apply to the allottees or the heirs of inherited interests. The lists characterized in the September 19, 1986, and March 10, 1989, publications as those of Partial Interests are no longer being published. All allotments and interests determined by the Secretary to be affected by sections 4(a), 4(b), or 5(c) of the Act are contained in what had been characterized as the Master List in previous publications and in this addition. Some of the allotments contained on the list included herein may represent partial interests only.

The inclusion of an allotment or interest on this list may be judicially reviewed pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 701, *et seq*. Any such action must be filed in Federal District Court for the District of Minnesota and shall be barred unless it is filed within 90 calendar days of this publication.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 15, 2011.

Paul Tsosie,

Chief of Staff, Assistant Secretary—Indian Affairs.

Instruction Sheet

Each questionable taking or transfer has been assigned a 10-, 11-, or 12-character Issue Number. In every instance, the first six characters, F53408, are identical and denote the Midwest Regional Office, Minnesota Agency and White Earth Indian Reservation. The last four, five or six characters identify the specific taking or transfer. The list contains information regarding allotments and inherited interests, in addition to those listed in previous publications, affected by the Act, including the following subheadings:

Issue No.: The 10-, 11- or 12-character number, explained above, which identifies the Regional Office, Agency, Reservation and specific taking or transfer affected by the Act. Where there are multiple tracts of land, there has occasionally been the need to add one or more letters to the Issue Number in order to distinguish among such tracts. Also, where a tract of land has been the subject of multiple takings or transfers by interest holders, letters have been added to the Issue Number to distinguish between such takings and transfers.

Allot. No.: The number assigned, at the time of the allotment selection, to the allotment comprising the tract of land which was involved in the taking or transfer. Many White Earth allottees, after receiving an original allotment, were also granted an additional allotment, with different numbers assigned to each. To distinguish between the two allotments, the allotment numbers are preceded by the letter O (Original Allotment) or A (Additional Allotment).

CO: The county in which the tract involved in the taking or transfer is located. These are identified as Becker (B), Clearwater (C) or Mahnomen (M) County.

Legal Sub, SEC, TWP, and *RNG:* The legal description of the tract which is involved with the taking or transfer by legal Subdivision and Section (SEC), Township (TWP) and Range (RNG) numbers. Where a metes and bounds description is required for the legal subdivision, it is described as MB (Metes and Bounds). Further information concerning such tracts can be obtained from the WELSA Project Office in Bemidji, Minnesota.

English Name: All known English names of the allottees, including given name, middle initial, middle name, maiden name, married name, and other English names which have been identified for the allottee.

Ojibway Name: The name of the allottee in Ojibway, the native language of the White Earth Band of the White Earth Band of Chippewa Indians. The names are shown with phonetic spellings.

Tracts which fall within the provisions of section 5(c) of the Act where the claimant is the White Earth Band appear on the list with the White Earth Band listed under the sub-heading of English Name.

Three tracts listed separately were published in the January 13, 2005, list with incorrect legal descriptions. They are now listed with corrected legal descriptions.

If you wish further information about allotments or interests therein which are contained in this list, call or write the WELSA Project office in care of the Bureau of Indian Affairs. The address and telephone number are indicated in the **FOR FURTHER INFORMATION CONTACT** section of this document. Be sure to include the complete Issue Number in any correspondence with the Bureau of Indian Affairs.

LIST OF ADDITIONAL LANDS AFFECTED BY THE WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985

Issue No.	Allot. No.	CO	Legal Sub	SEC	TWP	RNG	English name	Ojibwe name
F53–408–0003A	A–0640 0–0819	C	E2NW	34	144	38	Peter Parker	
F53–408–0137C	0–3358	M	LOT2&SESW	16	143	40		Naytahwubequay.
F53–408–0860	0–3835	B	LOTS 7 &8	4	142	40		Moonze.
F53–408–0860A	0–3835	B	LOTS 7 &8	4	142	40		Moonze.
F53–408–1103E	A–2040 0–3621	M	NWNE	11	146	40	Mary Hutchinson	
F53–408–1124A	0–3876	B	SENW &LOT2	19	142	41		Pugonay.
F53–408–1229	0–3988	B	NESE	14	142	42	Eva Sloan	
			NWSW	13	142	42		
F53–408–1286	A–2325	M	LOT3	7	145	41	James Quist	Paymwaywaygwonabe.

LIST OF ADDITIONAL LANDS AFFECTED BY THE WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985—Continued

Issue No.	Allot. No.	CO	Legal Sub	SEC	TWP	RNG	English name	Ojibwe name
	0–4712		W2NESW	7	145	41		
			W2E2NESW	7	145	41		
F–53–408–1286A	0–4712	B	LOT 1	8	142	37	James Quist	Paymwaywaygwonabe.
			LOT2	9	142	37		
			NWSW	2	142	37		
F53–408–1850	0–4443	B	LOT8	30	141	42	Charles H. Beaulieu	
F53–408–1850B	0–3321	B	NWNW (LOT 5)	30	141	42	Charles H. Beaulieu	
F53–408–2158	0–1673	M	S2SENW	4	145	40	Margaret Bonnin	
F53–408–2158B	0–1673	M	North 19.12 acres of Lot 3.	4	145	40	Margaret Bonnin	
F53–408–2190	A–3050	C	E2NW	10	144	38		Nahwahcumigoquay.
F53–408–2190A	A–3050 (0–4002)	C	E2NW	10	144	38		Nahwahcumigoquay.
F53–408–2191	0–3314	M	E2NE	25	144	42	Gregory Marchand	Mekenauk.
F53–408–2192	A–1824 (0–2505)	B	LOT3&SENW	1	142	37	Julia Potter	Pedwaywaygeshigoke.
Republished with corrected legal descriptions								
F53–408–0968	0–4682	M	NWSW	13	145	40	John/Charles LaRose.	Ominwaywaygeshig.
			NESE	14	145	40		
F53–408–0968D	A–2298	M	E2SW	12	145	40	John/Charles LaRose.	Ominwaywaygeshig.
F53–408–0995	0–3455	M	NESW&SENW	16	143	39	Viola Snider Saign.	

[FR Doc. 2011–18434 Filed 7–20–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Class III Tribal State Gaming Compact Process; Request for Comments

AGENCIES: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on renewal of Office of Management and Budget (OMB) approval for the collection of information for the Class III Tribal State Gaming Compact Process. The information collection is currently authorized by OMB Control Number 1076–0172, which expires November 30, 2011.

DATES: Interested persons are invited to submit comments on or before *September 19, 2011.*

ADDRESSES: You may submit comments on the information collection to Paula L. Hart, Director, Office of Indian Gaming, 1849 C Street, NW., MS 3657, Washington, DC 20240, Fax No. 202–273–3153.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart at 202–219–4066.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIA is seeking renewal of the approval for the information collection conducted under 25 CFR 293, Class III Tribal State Gaming Compact Process and the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2710(d)(8)(A), (B) and (C), which authorizes the Secretary to approve, disapprove or ''consider approved'' (*i.e.,* deem approved) a tribal state gaming compact or compact amendment and publish notice of that approval or considered approval in the **Federal Register**.

II. Request for Comments

BIA requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. This information collection expires November 30, 2011.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0172.

Title: Class III Tribal State Gaming Compact Process, 25 CFR 293.

Brief Description of Collection: The information collected includes tribal state compacts or compact amendments entered into by Indian tribes and State governments. The Secretary of the Interior reviews this information and may approve, disapprove or consider the compact approved.

Type: Extension without change of a currently approved collection.

Respondents: Indian tribes and State governments.

Number of Respondents: 32 per year, on average.

Frequency of Response: Once.

Estimated Time per Response: 360 hours.

Estimated Total Annual Burden: 11,520 hours.

Dated: July 15, 2011.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2011–18337 Filed 7–20–11; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Tribal Probate Codes

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to submit the information collection titled ''Tribal Probate Codes, 25 CFR 18'' to the Office of Management and Budget (OMB) for renewal pursuant to the Paperwork Reduction Act. The information collection is currently authorized by OMB Control Number 1076–0168, which expires November 30, 2011. The information collection requires Indian tribes to submit their tribal probate codes to the Secretary of the Interior for approval in accordance with the American Indian Probate Reform Act of 2004.

DATES: Interested persons are invited to submit comments on or before *September 19, 2011.*

ADDRESSES: You may submit comments on the information collection to Charlene Toledo, Bureau of Indian Affairs, Director, Special Projects, BIA Division of Probate Services, 2600 N Central Ave., STE MS102, Phoenix, AZ 85004; *e-mail: Charlene.Toldeo@bia.gov.*

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from Charlene Toledo, Bureau of Indian Affairs, Director, Special Projects. Telephone (505) 563–3371.

SUPPLEMENTARY INFORMATION:

I. Abstract

As sovereignties, federally recognized tribes have the right to establish their own probate codes. When those probate codes govern the descent and distribution of trust or restricted property, they must be approved by the Secretary of the Department of the Interior. The American Indian Probate Reform Act of 2004 (AIPRA) amendments to the Indian Land Consolidation Act, 25 U.S.C. 2201 *et seq.,* provides that any tribal probate code, any amendment to a tribal probate code, and any free-standing single heir rule are subject to the approval of the Secretary. This statute also establishes the basics of review and approval of tribal probate codes. This information collection covers tribes' submission of tribal probate codes, amendments, and free-standing single heir rules to the Secretary for approval. We are adjusting the estimated number of respondents down to 10, based on the number of submissions received per year since AIPRA was passed.

II. Request for Comments

The BIA requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. Approval for this collection expires November 30, 2011. Response to the information collection is required to obtain a benefit.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0168.

Title: Tribal Probate Codes, 25 CFR 18.

Brief Description of Collection: Submission of this information is required to comply with ILCA, as amended by AIPRA, 25 U.S.C. 2201 *et seq.,* which provides that Indian tribes must obtain Secretarial approval for all tribal probate codes, amendments, and free-standing single heir rules that govern the descent and distribution of trust or restricted property.

Type of Review: Extension without change of a currently approved collection.

Respondents: Indian tribes.

Number of Respondents: 10 per year.

Total Number of Responses: One per respondent, on occasion.

Estimated Time per Response: One-half hour.

Estimated Total Annual Burden: 5 hours.

Dated: July 15, 2011.

Alvin Foster,

Acting Chief Information Officer, Indian Affairs.

[FR Doc. 2011–18432 Filed 7–20–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Probate of Indian Estates

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to submit the information collection titled ''Probate of Indian Estates, Except for Members of the Osage Nation and the Five Civilized Tribes, 25 CFR 15'' to the Office of Management and Budget (OMB) for renewal pursuant to the Paperwork Reduction Act. The information collection is currently authorized by OMB Control Number 1076–0169, which expires November 30, 2011. The information collection addresses information that individuals and tribes provide to allow administration of the trust estates of Indian individuals in accordance with the American Indian Probate Reform Act of 2004.

DATES: Interested persons are invited to submit comments on or before *September 19, 2011.*

ADDRESSES: You may submit comments on the information collection to Charlene Toledo, Bureau of Indian Affairs, Director, Special Projects, BIA Division of Probate Services, 2600 N Central Ave., STE MS102, Phoenix, AZ 85004; *e-mail: Charlene.Toldeo@bia.gov.*

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from Charlene Toledo, Bureau of Indian Affairs, Director, Special Projects. Telephone (505) 563–3371.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Secretary of the Interior probates those assets held by individuals in trust or restricted status, in accordance with the American Indian Probate Reform Act of 2004 (AIPRA) amendments to the Indian Land Consolidation Act, 25 U.S.C. 2201 *et seq.* In order to compile the probate file, the Bureau of Indian Affairs (BIA) must obtain information regarding the deceased from individuals and the tribe. This renewal does not make any adjustments to the estimated burden hours or otherwise change the approved information collection.

II. Request for Comments

The BIA requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. Approval for this collection expires November 30, 2011. Response to the information collection is required to obtain a benefit.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0169.

Title: Probate of Indian Estates, Except for Members of the Osage Nation and the Five Civilized Tribes, 25 CFR 15.

Brief Description of Collection: This part contains the procedures that the Secretary of the Interior follows to initiate the probate of the trust estate of a deceased person for whom the Secretary holds an interest as trust or restricted property. The Secretary must perform the information collection requests in this part to obtain the information necessary to compile an accurate and complete probate file. This file will be forwarded to the Office of Hearings and Appeals (OHA) for disposition. Responses to these information collection requests are required to obtain benefits (*e.g.,* payment of a devise or claim from a probated estate) in accordance with the Secretary's sole statutory authority to probate estates (*see* 25 U.S.C. 372).

Type of Review: Extension without change of a currently approved collection.

Respondents: Indians, businesses, and tribal authorities.

Number of Respondents: 64,915.

Frequency of Collection: One per respondent each year with the exception of tribes that may be required to provide enrollment information on an average of approximately 10 times/year.

Description of Respondents: Indians, businesses, and tribal authorities.

Estimated Hours per Response: Ranges from 0.5 hour to 45.5 hour (see table below).

Estimated Total Annual Responses: 76,655.

Estimated Total Annual Burden Hours: 1,037,433.

New CFR section	Description of info collection requirement	Number of responses per yr	Hours per response	Total burden hours
15.9	File affidavit to self-prove will, codicil, or revocation	1,000	0.5	500
15.9	File supporting affidavit to self-prove will, codicil, or revocation	2,000	0.5	1,000
15.104	Reporting req.-death certificate	5,850	5	29,250
15.301	Reporting funeral expenses	5,850	2	11,700
15.105	Provide probate documents	21,235	45.5	966,193
15.302	Provide info on creditor claim (6 per probate)	35,100	0.5	17,550
15.203	Provide tribal information for probate file	5,620	2	11,240
Total		76,655		1,037,433

Dated: July 15, 2011.

Alvin Foster

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2011–18431 Filed 7–20–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for the Bureau of Indian Affairs Housing Improvement Program; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to the Office of Management and Budget.

SUMMARY: As required by the Paperwork Reduction Act, the Bureau of Indian Affairs (BIA) is submitting a request for renewal of OMB approval to collect information for the BIA Housing Improvement Program. The information collection is currently authorized by

OMB Control number 1076–0084, which expires August 31, 2011.

DATES: Submit comments on or before August 22, 2011.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an e-mail to: *OIRA_DOCKET@ omb.eop.gov.* Please send a copy of your comments to Les Jensen, Bureau of Indian Affairs, 1849 C Street, NW., Washington, DC 20240, *Leslie.Jensen@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Les Jensen (907) 586–7397. To see a copy of the entire collection submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

I. Abstract

BIA is seeking renewal of the approval for the information collection conducted under 25 CFR 256, Housing Improvement Program, to determine applicant eligibility for housing improvement program services and to determine priority order in which eligible applicants may receive the program services. Approval for this collection expires on August 31, 2011. This information includes an application form. No changes are being made to the form or to the approved burden hours for this information collection.

II. Request for Comments

BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0084.

Title: Bureau of Indian Affairs Housing Improvement Program, 25 CFR 256.

Brief Description of Collection: Submission of this information allows BIA to determine applicant eligibility for housing services based upon the criteria referenced in 25 CFR 256.9 (repairs and renovation assistance) and 256.10 (replacement assistance). Enrolled members of federally recognized tribes, who live within a tribe's designated and approved service area, submit information on an application form. The information is collected on a BIA Form 6407, ''Housing Assistance Application,'' and includes:

A. Applicant Information including: Name, current address, telephone number, date of birth, social security number, tribe, roll number, reservation, marital status, name of spouse, date of birth of spouse, tribe of spouse, and roll number of spouse.

B. Family Information including: Name, date of birth, relationship to applicant, and tribe/roll number.

C. Income Information: Earned and unearned income.

D. Housing Information including: Location of the house to be repaired, constructed, or purchased; description of housing assistance for which applying; knowledge of receipt of prior Housing Improvement Program assistance, amount to whom and when; ownership or rental; availability of electricity and name of electric company; type of sewer system; water source; number of bedrooms; size of house, and bathroom facilities.

E. Land Information including: Landowner; legal status of land; or type of interest in land.

F. General Information including: Prior receipt of services under the Housing Improvement Program and description of such; ownership of other housing and description of such; identification of Housing and Urban Development-funded house and current status of project; identification of other sources of housing assistance for which the applicant has applied and been denied assistance, if applying for a new housing unit or purchase of an existing standard unit; and advisement and description of any severe health problem, handicap or permanent disability.

G. Applicant Certification including: Signature of applicant and date, and signature of spouse and date.

Response is required to obtain a benefit.

Type of Review: Extension without change of a currently approved collection.

Respondents: Individuals.

Number of Respondents: 8,000 per year, on average.

Total Number of Responses: 8,000 per year, on average.

Frequency of Response: Once.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 8,000 hours.

Dated: July 11, 2011.

Alvin Foster

Acting Chief Information Officer, Indian Affairs.

[FR Doc. 2011–18384 Filed 7–20–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB050 L71220000.DU0000.241A; HAG11–0243]

Notice of Intent To Prepare an Amendment to the 1992 Three Rivers Resource Management Plan for Land Tenure in the Skull Creek Area and Associated Environmental Assessment, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Burns District Office, Three Rivers Resource Area, Burns, Oregon, intends to prepare an Environmental Assessment (EA) which will amend the 1992 Three Rivers Resource Management Plan (RMP), and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EA and Land Tenure Amendment to the Three Rivers RMP. Comments on issues may be submitted in writing until August 22, 2011. The date(s) and location(s) of any scoping meeting(s) will be announced at

least 15 days in advance through local news media, mailings to interested individuals, and on the BLM Burns Web site at: *http://www.blm.gov/or/districts/burns/index.php.*

In order to be included in the Draft EA, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the EA.

ADDRESSES: You may submit comments on issues and planning criteria related to the Amendment to the Three Rivers Resource Management Plan for the Skull Creek Area by any of the following methods:

- *E-mail: tlmclain@blm.gov.*
- *Fax:* 541–573–4411.
- *Mail:* Bureau of Land Management, Burns District Office, 28910 Hwy 20 W, Hines, OR 97738.

Documents pertinent to this proposal may be examined at the BLM Burns District Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Tara McLain, Realty Specialist, telephone 541–573–4462; address: BLM Burns District Office, 28910 Hwy 20 W, Hines, OR 97738, phone: 541–573–4462; e-mail: *tlmclain@blm.gov.* Persons who use a Telecommunications Device for the Deaf 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: This plan amendment and associated EA will address a proposed land disposal in the Skull Creek Area. The purpose of this disposal is for the sale of the 5-acre parcel to the current lessees to resolve ownership issues. The project area encompasses 5 acres of public land. The legal description for the land specifically identified for disposal is: W.M., T. 20 S., R. 29 E., section 34, E½SE¼SE¼SW¼.

The 5 acres of public land proposed for disposal are currently authorized for private use under a lifetime lease. A cabin exists on the parcel as part of a long-term unintentional trespass. This parcel is essentially cut off from public use due to private land holdings and the general topography of the area. The environmental analysis will address other resource issues as necessary.

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 EA. At present, the BLM has identified the following issues: Lands and realty management and social and economic values. 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. The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, minerals and geology, forestry, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7, 40 CFR 1508.22, 43 CFR 1610.2.

Kenny McDaniel,

BLM Burns District Manager.

[FR Doc. 2011–18330 Filed 7–20–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC 00900.L16100000.DP0000]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The next regular meeting of the Eastern Montana Resource Advisory Council will be held on Aug. 25, 2011 in Billings, Montana. The meeting will start at 8 a.m. and adjourn at approximately 3:30 p.m.

ADDRESSES: When determined, the meeting location will be announced in a news release.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana 59301. *Telephone:* (406) 233–2831.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior through the Bureau of Land Management on a variety of planning and management issues associated with public land management in Montana. At these meetings, topics will include: Miles City and Billings Field Office manager updates, subcommittee briefings, work sessions and other issues that the council may raise. All meetings are open to the public and the public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

Dated: July 8, 2011.

M. Elaine Raper,

Manager, Eastern Montana—Dakotas District.

[FR Doc. 2011–18382 Filed 7–20–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC 00900.L16100000.DP0000]

Notice of Public Meeting, Dakotas Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Dakotas Resource Advisory Council (RAC), will meet as indicated below.

DATES: The next regular meeting of the Dakotas Resource Advisory Council will be held on Aug. 17, 2011 in Dickinson, ND. The meeting will start at 8 a.m. and adjourn at approximately 3:30 p.m. When determined, the meeting location will be announced in a news release.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana, 59301. *Telephone:* (406) 233–2831. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior through the Bureau of Land Management on a variety of planning and management issues associated with public land management in the Dakotas. At these meetings, topics will include: North Dakota and South Dakota Field Office manager updates, subcommittee briefings, work sessions and other issues that the council may raise. All meetings are open to the public and the public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

Dated: July 8, 2011.

M. Elaine Raper,

Manager, Eastern Montana, Dakotas District

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[FR Doc. 2011–18376 Filed 7–20–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID–931–000–L1020–0000–JP–0000252R]

Final Supplementary Rules To Require the Use of Certified Noxious-Weed-Free Forage and Straw on Bureau of Land Management Lands in the State of Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) in Idaho is finalizing a supplementary rule that will require anyone using, feeding, or storing forage or straw on BLM-administered land in Idaho to use certified noxious-weed-free forage and straw. Restoration, rehabilitation, and stabilization projects also will be required to use weed-free straw bales and mulch for project work. This action is a cooperative effort among the BLM, the U.S. Forest Service (USFS), and the Idaho State Department of Agriculture (ISDA) that supports Idaho State noxious weed laws.

DATES: These supplementary rules are effective August 22, 2011.

ADDRESSES: You may direct inquiries by letter to Roger Rosentreter, Botanist, Bureau of Land Management, 1387 S. Vinnell Way, Boise, ID 83709, or by e-mail to *Roger_Rosentreter@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Roger Rosentreter, Botanist, Bureau of Land Management, 1387 S. Vinnell Way, Boise, ID 83709; telephone (208) 373–3824; e-mail *Roger_Rosentreter@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:

I. Background
II. Discussion of Public Comments
III. Discussion of the Final Supplementary Rules
IV. Procedural Matters

I. Background

Noxious and invasive weeds are a serious problem in the Western United States. Noxious weeds are spreading on BLM lands at a rate of over 2,300 acres per day, and on all Western public lands at approximately 4,600 acres per day. Species such as perennial pepperweed, purple loosestrife, yellow starthistle, hoary cress (whitetop), leafy spurge, diffuse knapweed, spotted knapweed, Russian knapweed, Scotch thistle, Canada thistle, rush skeletonweed, and many others are non-native to the United States and have no natural enemies to keep their populations in balance. Consequently, depending on the circumstances (*e.g.,* weed(s) involved, soil type, range condition, and climatic influences), these undesirable weeds may rapidly invade healthy ecosystems, displace native vegetation, reduce species diversity, destroy wildlife habitat, reduce forage for wild and domestic ungulates, weaken rehabilitation and landscape restoration efforts, increase soil erosion and stream sedimentation, create fire hazards, and/or degrade special resource values.

To curb the spread of noxious weeds, a growing number of Western States have jointly developed noxious-weed-free forage certification standards, and in cooperation with various Federal, State, and county agencies, have also passed weed management laws. Idaho participates in a regional inspection-certification process with Oregon, Montana, Washington, Nevada, and Wyoming and encourages, on a voluntary basis, forage producers in Idaho to grow and request voluntary certification inspections of forage products and straw.

Because forage products and straw containing noxious weed seed contribute to the spread and establishment of weed infestations, the USFS promulgated regulations in 1996, known as a ''Weed Free Hay Order,'' to address this issue. In response to that Order, the State of Idaho implemented a noxious-weed-free forage and straw certification program in 1997. Under Idaho Code, the ISDA wrote regulations in 2007 (Title 22, chapter 24 Noxious-Weed-Free Forage and Straw Rules and IDAPA 02.06.31). This program, which is a cooperative effort between the ISDA and the USFS, was established to limit the introduction and spread of noxious weeds through forage and straw onto National Forest System lands and other lands within Idaho. The Federal Plant Protection Act of 2000 (7 U.S.C. 7701–7751) directs agencies to develop integrated management plans for noxious weeds. These supplementary rules are intended to complement the existing regulatory framework.

These supplementary rules are promulgated under the authority of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1733(a) and 1740) and 43 CFR 8365.1–6.

II. Discussion of Public Comments

The BLM Idaho State Office proposed supplementary rules in the **Federal Register** on September 21, 2010 (75 FR 57496). Public comments were accepted for a 60-day period ending on November 22, 2010. The BLM received three written comments concerning the proposed rules. All three comments supported the proposed supplementary rules.

Two of the comments suggested revising proposed paragraph (4): ''Certified noxious-weed-free compressed forage bales are identified with yellow binding (strapping) material with the statement 'ISDA NWFFS' and the manufacturer's name printed in purple.'' The commenters suggested that the paragraph be reworded as follows: ''Certified noxious-weed-free compressed forage bales are identified by strapping/binding material authorized by NAWMA [the North American Weed Management Association] with the same color and marking requirements on products certified by other NAWMA approved agencies.'' This revision is consistent with the use of certification identifiers required by other agencies, and has been included in the final supplementary rules.

The third comment suggested that the BLM monitor livestock for what they have eaten during the three days before they are turned out onto the public lands, to address the possibility that weed seeds might pass through the digestive tracts of the livestock and subsequently germinate on the rangelands. Although there is a slight possibility of weed seeds surviving in this manner, BLM staff concluded that the resources and logistics of such monitoring would provide marginal benefit and would result in a significant regulatory burden for the agency and public. Consequently, these supplementary rules were not amended as suggested.

III. Discussion of the Final Supplementary Rules

The final supplementary rules apply to BLM-administered lands in Idaho and provide for consistent management with National Forest System lands across jurisdictional boundaries. The final supplementary rules will be implemented by including a standard stipulation in all Special Recreation Permits and most other use authorizations. Livestock grazing permits would not need to include such a stipulation because 43 CFR 4140.1(a)(3) already requires the permittee to secure authorization before supplemental feeding, maintenance feeding, and emergency feeding on lands administered by the BLM.

The supplementary rules require holders of affected permits and use authorizations to use certified noxious-weed-free forage and straw when they use hay, cubes, and straw on BLM-administered public lands in Idaho. Affected permittees includes recreationists using pack and saddle stock, grazing permittees, outfitters, and contractors and operators who use straw or mulch for reclamation or re-seeding purposes. These individuals or groups are required to use certified noxious-weed-free forage and straw while on BLM-administered public lands in Idaho, unless they have a permit or letter signed by a BLM authorized officer specifically authorizing the otherwise-prohibited act, or are transporting forage across public lands from one private property to another private property. The BLM in Idaho allows forage certified by other States to be used as forage on lands administered by Idaho BLM offices.

In addition, in cooperation with the USFS hay closure and the Idaho State Department of Agriculture (ISDA) Noxious-Weed-Free Forage and Straw Certification (NWFFS) program, the BLM prohibits the use of forage and straw that has not been certified as noxious-weed-free for all BLM-administered public lands within Idaho. The BLM State Office in Idaho, in cooperation with the ISDA, will implement a public information plan intended to publicize the supplementary rules and notify visitors and land users where they can purchase state-certified noxious-weed-free forage and straw.

Paragraph (1) of the proposed supplementary rules provided for a 60-day grace period between the effective date and enforcement of the supplementary rules. The BLM recognizes that immediate compliance with these supplementary rules might not be realistic, and has determined that it is appropriate to postpone enforcement of these supplementary rules for 30 days after the effective date of these supplementary rules. During that time, the BLM plans to concentrate on education and outreach. The proposed regulatory text referring to a grace period has been revised to provide for a specific enforcement date that is 30 days after the effective date of these supplementary rules. This revised language appears in the penalty provision (*i.e.,* paragraph (7)) of these supplementary rules.

These supplementary rules are in conformance with all BLM land use plans within Idaho. The final supplementary rules are consistent with and supportive of the statewide Conservation Plan for the Greater Sage-Grouse in Idaho (Idaho Sage-Grouse Advisory Committee, 2006), which recommends that the use of weed-free forage on public and state lands be required to discourage the spread of invasive annuals and noxious weeds.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These 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 rules will not have an annual effect of $100 million or more on the economy. They will not 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 final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The final supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor do they raise novel legal or policy issues. They merely impose rules regarding the use of certified noxious-weed-free forage and straw on BLM-administered public lands in Idaho.

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) titled ''Implementation of Requirements for Certified Noxious-Weed-Free Forage and Straw On Bureau of Land Management Lands in Idaho.'' The 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 (NEPA), 42 U.S.C. 4332(2)(C). A detailed environmental impact statement under NEPA is not required. The BLM has placed the EA and the Finding of No Significant Impact on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The BLM invites the public to review these documents.

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 final supplementary rules are not specific to commercial, organizational, or governmental entities of any size, but instead are widely applicable rules to protect the natural resources and the environment on public lands. The rules would have no significant impact on a substantial number of entities of any size. Therefore, the BLM has determined under the RFA that these final supplementary rules do not require preparation of a regulatory flexibility analysis.

Small Business Regulatory Enforcement Fairness Act

These final supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). They would not result in an annual effect on the economy of $100 million or more, in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. They would merely impose rules regarding the use of certified noxious-weed-free forage and straw on BLM-administered public lands in Idaho.

Unfunded Mandates Reform Act

These final supplementary rules do not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector, of more than $100 million per year, nor do these final supplementary rules have a significant or unique effect on small governments. The final supplementary rules do not require anything of State, local, or Tribal governments. 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 final supplementary rules are not government action capable of interfering with constitutionally protected property rights. The final supplementary rules do not have takings implications, do not address property rights in any form, and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that the 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 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 final supplementary rules apply in only one State, Idaho, and do not address jurisdictional issues involving the Idaho State Government. Therefore, in accordance with Executive Order 13132, the BLM has determined that these 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 BLM Idaho State Office has determined that these final supplementary rules would 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 TribalGovernments

In accordance with Executive Order 13175, the proposed supplementary rules and EA were mailed to all Idaho Tribes for comment. Consultation was conducted with the Shoshone-Paiute Tribes, and no concerns were expressed. In addition, the BLM Idaho State Office has found that the final supplementary rules do not include policies that have tribal implications.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These final supplementary rules are not a significant energy action. The rules will not have an adverse effect on energy supplies, distribution, or use. They only address the use of certified noxious-weed-free forage and straw on public lands and have no connection with energy policy.

Paperwork Reduction Act

These final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these final supplementary rules is Roger Rosentreter, Botanist, BLM Idaho State Office.

For the reasons stated in the preamble and under the authorities for supplementary rules at 43 U.S.C. 1733(a) and 1740 and 43 CFR 8365.1–6, the BLM Idaho State Director establishes final supplementary rules for public lands managed by the BLM in Idaho, to read as follows:

Supplementary Rules To Require the Use of Certified Noxious Weed-Free Forage on Bureau of Land Management-Administered Lands in Idaho

(1) To prevent the spread of noxious weeds on BLM-administered public lands in Idaho, it is a prohibited act to feed or store forage or straw on BLM-administered land that has not been certified as noxious-weed-free. Restoration, rehabilitation, and stabilization projects also are required to use noxious-weed-free straw bales and mulch for project work.

(2) The certification program currently includes 57 weeds that have been designated as noxious in Idaho under the Idaho State noxious-weed-free standards, or certified to be free from those weeds designated in the North American Weed Free Forage Program list, which was developed by the North American Weed Management Association (NAWMA). This NAWMA list currently includes the 57 weeds designated noxious in Idaho and also includes an additional 15 invasive weeds. The BLM in Idaho allows forage that meets Idaho, NAWMA, or other States' standards for certification as noxious-weed-free. Although weeds may be added or removed from these various lists, the BLM recognizes this forage as certified noxious-weed-free as long as it has been marked indicating that it meets the standards for certification.

(3) Certified noxious-weed-free hay must be identified by one of the following:

(a) State certification tag attached to the bale string;

(b) At least one strand of purple and yellow (intertwined) bale twine encircling the bale;

(c) Blue and orange (intertwined) bale twine encircling the bale; or

(d) Other colored twine encircling the bale that is used to designate certified forage.

(4) Certified noxious-weed-free compressed forage bales are identified by strapping/binding material authorized by NAWMA with the same color and marking requirements on products certified by other NAWMA approved agencies.

(5) Certified noxious-weed-free forage in bags is identified by a stamp, sticker, or printing on the bag identifying it as certified forage.

(6) The following persons/activities are exempt from these supplementary rules:

(a) Any person with a permit or letter signed by a BLM authorized officer specifically authorizing the prohibited act, such as an authorized livestock permittee during an emergency situation in which livestock must be fed uncertified forage or hay for a short period of time until they can be moved to safety; and

(b) Any person transporting hay or forage across public lands from private property to private property.

(7) Any person who knowingly and willfully violates the provisions of these supplementary rules on or after September 19, 2011 may be required to appear before a United States Magistrate and may be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both, in accordance with 43 U.S.C. 1733(a) and 43 CFR 8360.0–7.

Such violations may also be subject to enhanced fines provided for by 18 U.S.C. 3571.

Steven A. Ellis,

Idaho State Director, Bureau of Land Management.

[FR Doc. 2011–18336 Filed 7–20–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Denver Museum of Nature & Science has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Denver Museum of Nature & Science. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Denver Museum of Nature & Science at the address below by August 22, 2011.

ADDRESSES: Chip Colwell-Chanthaphonh, Denver Museum of Nature & Science, 2001 Colorado Blvd., Denver, CO 80204, telephone (303) 370–6378.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Denver Museum of Nature & Science, Denver, CO. The human remains and associated funerary objects were removed from Lancaster County, PA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Denver Museum of Nature & Science professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation of New York; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Saint Regis Mohawk Tribe, New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Shawnee Tribe, Oklahoma; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca Indians; Tuscarora Nation of New York; and the Haudenosaunee Standing Committee on Burial Rules and Regulations, a non-Federally recognized Indian organization for the purposes of NAGPRA.

History and Description of the Remains

Between 1926 and 1932, human remains representing a minimum of two individuals were removed from a burial context at the Keller Site (a burial component of the Washington Boro Village Site), in Lancaster County, PA, by Gerald B. Fenstermaker. On December 15, 1965, Francis and Mary Crane purchased the human remains as a part of a larger collection from Mr. Fenstermaker. At the time of the purchase, the human remains were on loan to the Hershey Museum, in Hershey, PA, where they remained until they were collected by the Cranes on October 18, 1966. In 1983, the Cranes donated the human remains to the Denver Museum of Natural History, as the museum was then called, and the remains were accessioned into the collections (DMNS catalogue numbers AC.9471 and AC.9542). The human remains are represented by one corked vial of cut hair and ten teeth. Through research and consultation, it was determined that the hair and teeth are human remains under NAGPRA. The human remains were originally determined to be culturally unidentifiable, but have been subsequently culturally affiliated. No known individuals were identified. The four associated funerary objects are one corked vial of white paint (AC.9472); one corked vial of red paint (AC.9473); a double-necked ceramic jar (AC.9474); and one necklace, which is made from red, white, blue, and black trade beads, four copper bells, two tubular copper beads, one bear tooth, and one scoop spoon made from a brass kettle (AC.9542).

Between 1926 and 1935, human remains representing a minimum of one individual were removed from a burial context in Pennsylvania by Gerald B. Fenstermaker. Based on museum records, Mr. Fenstermaker's collection history, and the associated funerary objects, dating to the Contact period, it is likely that these human remains were removed from the Washington Boro Village Site, in Lancaster County, PA. On December 15, 1965, the Cranes also purchased these human remains from Mr. Fenstermaker. In 1983, the Cranes donated the human remains to the museum and the remains were accessioned into the collections (AC.9812A). The human remains are represented by five teeth. Through research and consultation, it was determined that the teeth are human remains under NAGPRA. The human remains were originally determined to be culturally unidentifiable, but have been subsequently culturally affiliated.

No known individual was identified. The 31 associated funerary objects are 19 arrow points, 1 musket ball, 7 elk teeth, 1 bag of copper and iron fragments, 1 bag of animal bone fragments, 1 shell disk bead, and 1 red trade bead (AC.9812B).

Based on physical analysis and catalogue records, the human remains are determined to be Native American. Archeological evidence suggests that the Washington Boro Village Site and burial components, including the Keller Site, date to approximately A.D. 1600–1625. Archeological evidence and historical documentation show that the Washington Boro Village Site was occupied by the Susquehannock.

While the biological record is neutral regarding cultural affiliation, the Susquehannock likely shared a geographical affinity with the Haudenosaunee, as evidenced by shared ancestral lands in New York, common land use during the 1600s, and, starting in the 1700s, Haudenosaunee claims to the former territory of the Susquehannock. Furthermore, the Susquehannock shared kinship with the Haudenosaunee through similar clan systems, adoption, intermarriage, and burial practices. Current archeological evidence suggests that the Susquehannock and Haudenosaunee were descended from the same proto-Iroquoian culture. Around A.D. 1300, the Susquehannock split off from that culture. Settling in Lancaster County, PA, the Susquehannock had become a distinct group by A.D. 1580. Archeological evidence also demonstrates that the Susquehannock and Haudenosaunee shared a very similar material culture tradition across multiple artifact categories.

For more than a century, anthropologists have consistently referred to the Susquehannock as an Iroquoian people, and anthropological theories of diaspora and assimilation reasonably explain the incorporation of Susquehannock into the Haudenosuanee Confederacy in the late 1600s and 1700s. Although folkloric evidence is not abundant, nevertheless it is consistent with a conclusion of cultural affiliation. Scholars have conclusively shown that the Susquehannock language was very closely related to the other extant Iroquoian languages, which demonstrates a robust interrelationship among these peoples. Haudenosaunee oral tradition consistently and unambiguously expresses a strong cultural and historical affinity for the Susquehannock. Historical evidence indicates a complex relationship between the Susquehannock and Haudenosaunee, but convincingly suggests that by the late 1600s, the Susquehannock freely allowed themselves to be adopted into the Haudenosaunee. Expert opinion, as constituted by the NAGPRA Review Committee, further supports a determination that the Haudenosaunee and Susquehannock are culturally affiliated under NAGPRA. In summary, six lines of evidence support cultural affiliation (geographical, archaeological, anthropological, oral tradition, historical evidence, and expert opinion) and two lines strongly support cultural affiliation (kinship and linguistics). One line of evidence is indeterminate (biology), and one line of evidence is consistent with cultural affiliation (folklore). Therefore, the museum reasonably believes that there is a shared group identity between the Haudenosaunee Confederacy and the Susquehannock people who occupied Lancaster County, PA, at the Washington Boro Village Site.

Determinations Made by the Denver Museum of Nature & Science

Officials of the Denver Museum of Nature & Science have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 35 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Saint Regis Mohawk Tribe, New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Tonawanda Band of Seneca Indians; and the Tuscarora Nation of New York.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Chip Colwell-Chanthaphonh, Denver Museum of Nature & Science, 2001 Colorado Blvd., Denver, CO 80204, telephone (303) 370–6378, before August 22, 2011. Repatriation of the human remains and associated funerary objects to the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation; Saint Regis Mohawk Tribe, New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Tonawanda Band of Seneca Indians; and the Tuscarora Nation of New York, may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation of New York; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Saint Regis Mohawk Tribe, New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Shawnee Tribe, Oklahoma; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca Indians; Tuscarora Nation of New York; and the Haudenosaunee Standing Committee on Burial Rules and Regulations, a non-Federally recognized Indian organization for the purposes of NAGPRA, that this notice has been published.

Dated: July 14, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–18358 Filed 7–20–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Slater Museum of Natural History, University of Puget Sound, Tacoma, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Slater Museum of Natural History, University of Puget Sound has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Slater Museum of Natural History, University of Puget Sound. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Slater Museum of Natural History, University of Puget Sound at the address below by August 22, 2011.

ADDRESSES: Peter Wimberger, Slater Museum of Natural History, University of Puget Sound, 1500 North Warner St., Tacoma, WA 98416–1088, telephone (253) 879–2784.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Slater Museum of Natural History, University of Puget Sound, Tacoma, WA. The human remains were removed from ''Western Washington.''

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Slater Museum of Natural History, University of Puget Sound professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Cowlitz Indian Tribe, Washington; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Samish Indian Tribe, Washington; Sauk-Suiattle Indian Tribe of Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Snoqualmie Tribe, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and the Upper Skagit Indian Tribe of Washington (hereinafter referred to as ''The Tribes''). In addition, the Slater Museum of Natural History, University of Puget Sound professional staff consulted with the following non-Federally recognized Indian groups: Chinook Tribe, Duwamish Tribe, Kikiallus Nation, Marietta Band of Nooksack Indians, Snohomish Tribe, Snoqualmoo Tribe, and Steilacoom Indian Tribe (hereinafter referred to as ''The Indian Groups''). The Slater Museum of Natural History, University of Puget Sound received responses from the Confederated Tribes and Bands of the Yakama Nation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; and the Squaxin Island Tribe of the Squaxin Island Reservation, Washington. Skokomish Indian Tribe of the Skokomish Reservation, Washington requested a status report on the disposition of the remains, but made no claim for disposition. The Puyallup Tribe of the Puyallup Reservation, Washington, and Confederated Tribes and Bands of the Yakama Nation, Washington, submitted a NAGPRA claim for the individual described in this Notice of Inventory Completion. The Squaxin Island Tribe of the Squaxin Island Reservation, Washington, supported the disposition of the individual to these two Indian tribes.

History and Description of the Remains

At an unknown date prior to 1970, human remains representing a minimum of one individual were removed from ''Western Washington.'' The remains were stored at the University of Puget Sound's Department of Comparative Sociology since at least the 1970s. In late Fall 2006 the remains were transferred to the Slater Museum by University staff. There is no record of the excavator, donor, date of removal, or exact provenience, except for ''Western Washington.'' No known individual was identified. No associated funerary objects are present.

Elements present include a cranium and a mandible. No cranial deformation is present and the mandible is missing five teeth postmortem. The remains are overall very clean and of a dark mottled coloration. Small roots are present in the nasal cavity and sediments are found endocranially, suggesting the individual was likely removed from an archeological context. Slight cortical exfoliation is present on both the cranium and mandible, indicating the individual was buried in a taphonomic environment characterized by alternating dry and wet conditions. Based on 14 morphological characteristics, a physical anthropologist determined the remains represent a (possibly) male individual 40–60 years old and of Native American ancestry (Gill 1998; Rhine 1990). Additionally, the very even and severe enamel wear indicate the mastication of population-specific coarse foods that characterized the diets of pre-contact and post-contact Native American populations (Buikstra and Ubelaker 1994). These characteristics, in addition to the Slater Museum's limited information, indicate that the individual is of Native American ancestry. The remains may have been removed from any location within Western Washington, which is considered by the Museum to include the 19 counties located between the Pacific Ocean and the Cascade Mountains. These include: Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom Counties.

Determinations Made by the Slater Museum of Natural History, University of Puget Sound

Officials of the Slater Museum of Natural History, University of Puget Sound have determined that:

- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Tribes and The Indian Groups.
- Other credible lines of evidence, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Tribes and The Indian Groups.
- Pursuant to 25 U.S.C. 3001(9), the human remains described above

represent the physical remains of one individual of Native American ancestry.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Confederated Tribes and Bands of the Yakama Nation, Washington, and Puyallup Tribe of the Puyallup Reservation, Washington.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Peter Wimberger, Slater Museum of Natural History, University of Puget Sound, 1500 North Warner St., Tacoma, WA 98416–1088, telephone (253) 879–2784, before August 22, 2011. Disposition of the human remains to the Confederated Tribes and Bands of the Yakama Nation, Washington, and Puyallup Tribe of the Puyallup Reservation, Washington, may proceed after that date if no additional requestors come forward.

The Slater Museum of Natural History, University of Puget Sound is responsible for notifying The Tribes and The Indian Groups that this notice has been published.

Dated: July 14, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–18344 Filed 7–20–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC and Oregon Museum of Science and Industry, Portland, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs and the Oregon Museum of Science and Industry have completed an inventory of human remains, in consultation with the appropriate Indian tribe, and determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Oregon Museum of Science and Industry. Repatriation of the human remains to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Bureau of Indian Affairs through the Oregon Museum of Science and Industry at the address below by August 22, 2011.

ADDRESSES: Lori Erickson, Curator, Oregon Museum of Science and Industry, 1945 SE Water Ave., Portland, OR 97214, telephone (503) 797–4582.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the Oregon Museum of Science and Industry, Portland, OR. The human remains were removed from an area within the boundaries of the Hopi Reservation in Arizona.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Oregon Museum of Science and Industry professional staff on behalf of the Bureau of Indian Affairs in consultation with representatives of the Hopi Tribe of Arizona.

History and Description of the Remains

In the early 1940s, human remains representing a minimum of one individual were removed from an area of the Hopi Reservation in Arizona by Ray Ghents, Dr. Hewitt, and Dr. Fischer. The exact location of the area is unclear from museum records. Mr. Paul Ghents donated the remains to the Oregon Museum of Science and Industry on November 10, 1977. No known individual was identified. No associated funerary objects are present.

The human remains have been identified as Native American based on observable dental traits and museum documentation. The remains are approximately 500 years old.

Determinations Made by the Bureau of Indian Affairs and the Oregon Museum of Science and Industry

Officials of the Bureau of Indian Affairs and the Oregon Museum of Science and Industry have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Lori Erickson, Curator, Oregon Museum of Science and Industry, 1945 SE Water Ave., Portland, OR 97214, telephone (503) 797–4582, before August 22, 2011. Repatriation of the human remains to the Hopi Tribe of Arizona may proceed after that date if no additional claimants come forward.

The Bureau of Indian Affairs and the Oregon Museum of Science and Industry are responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: July 14, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–18346 Filed 7–20–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The American Museum of Natural History has completed an inventory of human remains, in consultation with the appropriate Indian tribe, and has determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the American Museum of Natural History. Repatriation of the human remains to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the American Museum

of Natural History at the address below by August 22, 2011.

ADDRESSES: Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the American Museum of Natural History, New York, NY. The human remains were collected from West Brewster, Cape Cod, Barnstable County, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the American Museum of Natural History professional staff in consultation with representatives of the Mashpee Wampanoag Tribe, Massachusetts.

History and Description of the Remains

Sometime prior to 1896, human remains representing a minimum of one individual were collected by R.W. Sears from what is identified in museum records as an ''Indian grave'' site in West Brewster, Cape Cod, Barnstable County, MA. The human remains were subsequently purchased by the American Museum of Natural History from the Giffort Brothers in 1896. No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on cranial and dental morphology, as well as the recorded association of the remains with a Native American grave site. A bioarcheologist who examined the human remains estimated them to be of a recent age. Consultation information provided by the tribe, as well as archeological and historical sources, indicate that the geographic location of the ''Indian grave'' site is consistent with the traditional and post-contact territory of the Mashpee Wampanoag Tribe, Massachusetts.

Determinations Made by the American Museum of Natural History

Officials of the American Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Mashpee Wampanoag Tribe, Massachusetts.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, before August 22, 2011. Repatriation of the human remains to the Mashpee Wampanoag Tribe, Massachusetts, may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Mashpee Wampanoag Tribe, Massachusetts, that this notice has been published.

Dated: July 14, 2011.

Sangita Chari,

Acting Manager, National NAGPRA Program.

[FR Doc. 2011–18352 Filed 7–20–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: University of Colorado Museum, Boulder, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Colorado Museum has completed an inventory of human remains and an associated funerary object, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the human remains and associated funerary object and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object may contact the University of Colorado Museum. Disposition of the human remains and associated funerary object to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary object should contact the University of Colorado Museum at the address below by August 22, 2011.

ADDRESSES: Steve Lekson, Curator of Anthropology, University of Colorado Museum, in care of Jan Bernstein, NAGPRA Consultant, Bernstein & Associates, 1041 Lafayette St., Denver, CO 80218, telephone (303) 894–0648.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and an associated funerary object in the possession of the University of Colorado Museum, Boulder, CO. The human remains and associated funerary object were removed from Weld County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary object was made by University of Colorado Museum professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Cheyenne and Arapaho Tribes, Oklahoma; Comanche Nation, Oklahoma; Crow Tribe of Montana; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Apache Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota;

Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado New Mexico & Utah (hereinafter referred to as ''The Tribes'').

History and Description of the Remains

On an unknown date, human remains representing a minimum of one individual were removed from Maxson #1, Site No. 20, N.E. of Greeley, Kuner, Weld County, CO, by Asa C. Maxson, an avocational archeologist. In February 2008, the human remains (16 teeth) were found in the collection during an inventory/computerization project. In July 2009, an object was identified as being associated with this individual during an assessment of the human remains. Mr. Maxson of Longmont, CO, created a large archeological collection of items from Arizona, Colorado, New Mexico, and Mexico. He donated his collection to the museum in 1982. No known individual was identified. The associated funerary object is a bird of prey talon that was possibly burned.

Determinations Made by the University of Colorado Museum

Officials of the University of Colorado Museum have determined that:

- Based on heavy dental attrition at a relatively young age (18–21 years old) consistent with the introduction of grit into the food of a typical Native American diet via the use of manos and metates, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary object and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and associated funerary object were removed is the aboriginal land of the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma; and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.
- Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the Native American human remains and associated funerary object were removed is the aboriginal land of the Arapahoe Tribe of the Wind River Reservation, Wyoming, and Cheyenne and Arapaho Tribes, Oklahoma.
- Other credible lines of evidence indicate that the land from which the Native American human remains were removed is the aboriginal land of the Crow Tribe of Montana.
- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary object is to the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma; Crow Tribe of Montana; and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Steve Lekson, Curator of Anthropology, University of Colorado Museum, in care of Jan Bernstein, NAGPRA Consultant, Bernstein & Associates, 1041 Lafayette St., Denver, CO 80218, telephone (303) 894–0648, before August 22, 2011. Disposition of the human remains and associated funerary object to the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma; Crow Tribe of Montana; and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana, may proceed after that date if no additional claimants come forward.

The University of Colorado Museum is responsible for notifying The Tribes that this notice has been published.

Dated: July 14, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–18359 Filed 7–20–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Oregon State University Department of Anthropology, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Oregon State University Department of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Oregon State University Department of Anthropology. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Oregon State University Department of Anthropology at the address below by August 22, 2011.

ADDRESSES: Dr. David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–4515.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Oregon State University Department of Anthropology, Corvallis, OR. The human remains were removed from the mouth of the Sandy River, Multnomah County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Oregon State University Department of Anthropology professional staff in consultation with a Columbia River Gorge National Scenic Area archeologist, and the Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and the Nez Perce Tribe, Idaho. The Burns Paiute Tribe; Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes

of the Siletz Indians of Oregon; Coquille Tribe of Oregon; Cow Creek Band of Umpqua Indians of Oregon; and Klamath Tribes, Oregon, were notified, but did not participate in consultations about the human remains described in this notice.

History and Description of the Remains

In the 1970s, human remains representing a minimum of three individuals were removed from somewhere near the mouth of the Sandy River, in Multnomah County, OR. The human remains were removed due to illegal pot-hunting activities. The human remains were subsequently given to the university, but specific provenience information was not provided. No known individuals were identified. No associated funerary objects are present.

Ethnographic records suggest the mouth of the Sandy River, where it meets the Columbia River, was occupied by Chinookan peoples. The Chinookan peoples occupied a vast area for hunting, fishing, and trade that was ''south of the Columbia from the cascades to the mouth of the Willamette'' (Berreman, 1937). The Sandy River is within this vast area. The human remains described above are believed to have been removed from this area, which is within or near the traditional lands of the Chinookan peoples whose descendants are members of the present-day Confederated Tribes of the Grand Ronde Community of Oregon and Confederated Tribes of the Warm Springs Reservation of Oregon.

The Confederated Tribes of the Grand Ronde Community of Oregon includes numerous bands from western Oregon, as well as some communities from extreme southwestern Washington and northern California. These communities and bands are the Clackamas Chinook, Multnomah Chinook, Clatsop Chinook, Willapa Chinook, Lower Chinook Proper, Nehalem, Salmon River, Tillamook, Nestucca, Kathlamet or Wahkiakum Chinook, Skilloot, Clatskanie, Clowewalla of the Tumwater, Cascades or Mehetatate of the Tumwater, Tualatin Calapooia, Yamhill Calapooia, Pudding River or Ahantchuyak Calapooia, Santiam Calapooia, Che-lucke-mute or Luckiamute Calapooia, Chelamelah or Long Tom Calapooia, Winefelly, Chemapho or Muddy Creek Calapooia, Chepenefa or Marys River Calapooia, Tsankupi or Tecopa Calapooia, Mohawk or Chefan Calapooia, Yoncalla, Northern Molalla, Southern Molalla, Latgawa or Upper Takelma, Rogue River, Upper Umpqua, and Northern Shasta. At the time of contact, the individual groups spoke 30 dialects of the Athapascan, Chinookan, Kalapuyan, Takelman, Molalan, Sahaptin, Salishan, and Shastan language families. In 1856–1857, the U.S. Government forcibly relocated the Grand Ronde peoples to the Grand Ronde Reservation, located at the headwaters of the South Yamhill River in Yamhill and Polk Counties, OR. The last additions to the Grand Ronde came onto the reservation in the 1870s. The Confederated Tribes of the Grand Ronde Community of Oregon were first incorporated in 1935, terminated from Federal recognition in 1954, and restored to recognized status in 1983.

The Confederated Tribes of the Warm Springs Reservation of Oregon are composed of the Wasco Tribe, the Warm Springs Tribes, and groups of Northern Paiutes. The Wasco Tribe, made up of the Dalles and Dog River bands, occupied the lower Columbia River area and belong to the Chinookan language group. The Warm Springs Tribes, composed of the Upper Deschutes (Tygh), Lower Deschutes (Wyam), Tenino and John Day (Dock-spus) bands, lived on the Deschutes and John Day Rivers, as well as up river of the Wasco Tribe on the Columbia River. The Northern Paiutes were forcibly moved onto the Warm Springs Reservation in 1879 and 1884, but originally had roamed a large territory that included parts of the Deschutes and John Day River Valleys, as well as high desert territories to the east and south of the reservation. In 1855, the Warm Springs and Wasco Tribes entered into a treaty with the United States of America, ceding more than 10 million acres of land. In 1938, the Warm Springs, Wasco and Northern Paiute Tribes formed a confederacy.

Determinations Made by the Oregon State University Department of Anthropology

Officials of the Oregon State University Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Grand Ronde Community of Oregon and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–3850, before August 22, 2011. Repatriation of the human remains to the Confederated Tribes of the Grand Ronde Community of Oregon and the Confederated Tribes of the Warm Springs Reservation of Oregon may proceed after that date if no additional claimants come forward.

The Oregon State University Department of Anthropology is responsible for notifying the Burns Paiute Tribe; Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Indians of Oregon; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Coquille Tribe of Oregon; Cow Creek Band of Umpqua Indians of Oregon; Klamath Tribes, Oregon; and Nez Perce Tribe, Idaho, that this notice has been published.

Dated: July 14, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–18356 Filed 7–20–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: University of Colorado Museum, Boulder, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Colorado Museum has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the University of Colorado Museum.

Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the University of Colorado Museum at the address below by August 22, 2011.

ADDRESSES: Steve Lekson, Curator of Anthropology, University of Colorado Museum, in care of Jan Bernstein, NAGPRA Consultant, Bernstein & Associates, 1041 Lafayette St., Denver, CO 80218, telephone (303) 894–0648.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession and control of the University of Colorado Museum, Boulder, CO. The human remains and associated funerary objects were removed from Bell County, KY, and Summers County, WV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by University of Colorado Museum professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Shawnee Tribe, Oklahoma; and United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

On an unknown date, human remains representing a minimum of two individuals were removed from a cave near Pineville, in Bell County, KY, by Gervis W. Hoofnagle (1886–1959), an avocational archeologist. No known individuals were identified. The associated funerary objects are five non-human rib bones (four of which have been modified to come to a point at one end).

Mr. Hoofnagle's widow, Alice G. Hoofnagle, sold his collection to the University of Colorado Museum in March 1961. In February 2008, the human remains and associated funerary objects were found in the museum. Based on reasonable evidence provided during consultation, the human remains are Native American. The same evidence supports cultural affiliation to all three Federally-recognized Cherokee tribes—Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma. Traditional Cherokee burials are found in rock crevices and caves; traditional Cherokee burials include non-human bones such as the sharpened rib bones found with this burial. A portion of Bell County, KY, is within the aboriginal territory of the Cherokee based on a final judgment of the Indian Claims Commission. In addition, Bell County, KY, is within the aboriginal territory of the Cherokee based on reasonable evidence presented during consultation.

On an unknown date, human remains representing a minimum of one individual were removed from Burial 2, Farley site, on the New River, near Hinton, in Summers County, WV, by Hoofnagle (1886–1959). No known individual was identified. The associated funerary objects are two bear teeth.

This individual was part of the Hoofnagle collection sold to the University of Colorado Museum in March 1961. Based on tooth wear and the associated funerary objects, the human remains are Native American. During consultation, reasonable evidence was presented in support of Summers County, WV, being within the aboriginal territory of the Cherokee. Also during consultation, reasonable evidence was presented in support of continuity in the utilization of animal parts, such as bear teeth, in traditional Cherokee burials.

Determinations Made by the University of Colorado Museum

Officials of the University of Colorado Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the seven objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Steve Lekson, Curator of Anthropology, University of Colorado Museum, in care of Jan Bernstein, NAGPRA Consultant, Bernstein & Associates, 1041 Lafayette St., Denver, CO 80218, telephone (303) 894–0648, before August 22, 2011. Repatriation of the human remains and associated funerary objects to the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma, may proceed after that date if no additional claimants come forward.

The University of Colorado Museum is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Shawnee Tribe, Oklahoma; and United Keetoowah Band of Cherokee Indians in Oklahoma, that this notice has been published.

Dated: July 14, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–18353 Filed 7–20–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Oregon State University Department of Anthropology, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Oregon State University Department of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact

the Oregon State University Department of Anthropology. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Oregon State University Department of Anthropology at the address below by August 22, 2011.

ADDRESSES: Dr. David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–4515.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Oregon State University Department of Anthropology, Corvallis, OR. The human remains were removed from Randolph and White Counties, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Oregon State University Department of Anthropology professional staff in consultation with representatives of the Iowa Tribe of Kansas and Nebraska, Peoria Tribe of Indians of Oklahoma, and the Osage Nation, Oklahoma (formerly the Osage Tribe). Representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Miami Tribe of Oklahoma; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Ottawa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band of Potawatomi Nation, Kansas; Quapaw Tribe of Indians, Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Shawnee Tribe, Oklahoma; Tonkawa Tribe of Indians of Oklahoma; Winnebago Tribe of Nebraska; and Wyandotte Nation, Oklahoma, were notified but did not participate in consultation on the human remains described in this notice.

History and Description of the Remains

On an unknown date, human remains representing a minimum of one individual were probably removed from the Ethel R. Wilson site, White County, IL, by an unknown individual. The remains were donated to the Department of Anthropology by Holm Neumann, the son of Dr. Georg Karl Neumann, in 1976. Dr. Neumann worked as a physical anthropologist for Indiana State University, Terre Haute, IN. No known individual was identified. No associated funerary objects are present.

Records indicate that the ancestral remains are identified as ''WH501–19 T.'' According to the NAGPRA culturally unidentifiable inventories (CUI) database submitted by Indiana State University, ''WH'' is used to identify remains from the Ethel R. Wilson site (also known as the Wilson Site Cemetery), which is located in White County, IL. Based on the markings, the remains are reasonably believed to have been removed from the Ethel R. Wilson site. This site is on the western bluffs of the Wabash River, north of the confluence of the Wabash and Ohio Rivers. The Wilson site is thought to have been originally excavated by Norbert Bingman and Arkel Fisher in 1949. During the summer of 1950, Dr. Neumann directed archeological work at this site. Eleven burial mounds were recorded. The Illinois State Museum, University of Chicago, and the Southern Illinois University sponsored excavations in the lower Wabash Valley midway between the Ohio and Illinois Hopewellian centers, in an effort to clarify possible origins, development, cultural affiliations and physical relationships between the populations (Neumann 1951: *Journal of the Illinois State Archaeology Society,* Vol. 1, No. 4, April). Dr. Neumann identified the population as belonging to the Hopewellian culture (Pennefather-O/Brien 1999; Fowler 1951; Neumann 1951).

At an unknown date, human remains representing a minimum of two individuals were removed from an unknown site most likely in Randolph County, IL. The remains were donated to the Department of Anthropology by Holm Neumann in 1976. No known individuals were identified. No associated funerary objects are present.

The human remains have markings of either ''Ra 501'' or ''Ra 502'' written upon them, indicating the location from which they were excavated. Records in the CUI database for Indiana University show ''Ra'' as Randolph County, IL, and the site is listed as ''Hiller.'' In Neumann's records, he has a map indicating excavation work at Modoc Rock Shelter in Randolph County, IL. Between 1952 and 1956, the Modoc Rock Shelter site (11R5) was studied by Melvin L. Fowler, during four excavation seasons sponsored by the Illinois State Museum and the University of Chicago (Ahler 1993). This site is located at the base of the eastern bluffs of the Mississippi River Valley and is a National Historic Landmark. Included in the Neumann collection, are a series of photos of human remains that had been sent to Dr. Neumann from Thorne Deuel, Illinois State Museum, with a letter (dated December 15, 1958) requesting that Dr. Neumann identify the photos and send one copy of the photos back to the Illinois State Museum. On the back of some of the photos is written ''Ra 501–29 Modoc Rock Shelter'' or ''Hiller Site, Randolph Co., Ill Archaic III. State Mus. Coll. Ra 502–2B.'' Based on the markings on the remains, the records in the CUI database for Indiana University, and the photos identifying the origins as Modoc Rock Shelter or the Hiller Site, it is reasonably believed that these remains are from one or both of those sites.

White County is located in southeastern Illinois, along the Ohio River. Randolph County is located in southwestern Illinois, along the Mississippi River. Randolph County is an area historically occupied by the Michigamea, which is represented by the present-day Peoria Tribe of Indians of Oklahoma. Through consultation evidence, the Peoria Tribe have also shown cultural affiliation to White County, IL. In addition, both counties are part of the Osage ancestral territory. According to consultation evidence, the Osage historically migrated along the Ohio Valley to the Ohio River and Mississippi River confluence. The Osage are a Dhegiha Siouan tribe. They and other Dhegiha Siouan tribes' original territory is east of the Alleghenies and possibly in the Piedmont regions of Virginia and the Carolinas. Historical

documentation states that the Osage, Ponca, Kaw, Omaha, and the Kansa (Quapaw) made up a single tribe that lived on the banks of the Ohio River. The tribe eventually migrated downstream, residing along the Wabash, and later reached the Mississippi River. Over a period of time, the tribe migrated northward along the Mississippi River until reaching the Missouri River. The tribe split into several different tribes during this migration period: Those who migrated northward from the Missouri River were later known as the Omaha; those downstream from the Mississippi became the Quapaw; the Ponca and Osage went westward from the Missouri River toward the Osage River. In 1541, Desoto had contact with the Quapaw on the Mississippi River. In the late 17th century, Europeans met Osage Indians on the Osage River and reported that they roamed over much of Kansas, Arkansas, Oklahoma, and Illinois (Bailey 1973 and 1995; Chapman 1982; Graves 1949; and Hunter 2009). The descendants of the Dhegiha Siouan are members of the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Omaha Tribe of Nebraska; Osage Nation, Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Quapaw Tribe of Indians, Oklahoma; and the Tonkawa Tribe of Indians of Oklahoma.

Determinations Made by the Oregon State University Department of Anthropology

Officials of the Oregon State University Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Omaha Tribe of Nebraska; Osage Nation, Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Quapaw Tribe of Indians, Oklahoma; and the Tonkawa Tribe of Indians of Oklahoma.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. David McMurray, Oregon State University, Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–4515, before August 22, 2011. Repatriation of the human remains to the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Omaha Tribe of Nebraska; Osage Nation, Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Quapaw Tribe of Indians, Oklahoma; and Tonkawa Tribe of Indians of Oklahoma, may proceed after that date if no additional claimants come forward.

The Oregon State University Department of Anthropology is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Miami Tribe of Oklahoma; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Osage Nation, Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band of Potawatomi Nation, Kansas; Quapaw Tribe of Indians, Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Shawnee Tribe, Oklahoma; Tonkawa Tribe of Indians of Oklahoma; Winnebago Tribe of Nebraska; and Wyandotte Nation, Oklahoma, that this notice has been published.

Dated: July 14, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–18343 Filed 7–20–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM and Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Gila National Forest and the Field Museum of Natural History have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and have determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the U.S. Department of Agriculture, Forest Service, Gila National Forest. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the U.S. Department of Agriculture, Forest Service, Gila National Forest at the address below by August 22, 2011.

ADDRESSES: Dr. Frank E. Wozniak, Southwestern Region and National NAGPRA Coordinator, U.S. Department of Agriculture, Forest Service, 333 Broadway Blvd., SE., Albuquerque, NM 87102, telephone (505) 842–3238.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM, and in the possession of the Field Museum of Natural History, Chicago, IL. The human remains and associated funerary objects were removed from the Gila National Forest, Catron Country, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in

this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the U.S. Department of Agriculture, Forest Service, Gila National Forest professional staff in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereinafter referred to as ''The Tribes'').

History and Description of the Remains

Between 1935 and 1955, human remains and associated funerary objects were recovered from the SU site, Oak Springs Pueblo, Tularosa Cave, Apache Creek Pueblo, the Turkey Foot Ridge site, Wet Leggett Pueblo, Three Pines Pueblo, South Leggett Pueblo and Valley View Pueblo, in Gila National Forest, Catron County, NM, by Dr. Paul Martin of the Field Museum of Natural History, Chicago, IL. There have been several Notices of Inventory Completion (NICs) published in the **Federal Register** for these sites (63 FR 39293–39294, July 22, 1998; 70 FR 44686–44687, August 3, 2005; 70 FR 56483–56484, September 27, 2005; and 71 FR 38413, July 6, 2006). The human remains and associated funerary objects described in those NICs have been repatriated. In 2009 and 2010, the Field Museum of Natural History staff undertook a reassessment of archeological materials removed from the Gila National Forest. Further, in 2010, a large portion of the North American archeological collections were moved to a new location in the museum. During the course of the re-examination and transfer, additional human remains and associated funerary objects from Tularosa Cave, Apache Creek Pueblo, the Turkey Foot Ridge site, Wet Leggett Pueblo, Three Pines Pueblo, and Valley View Pueblo were discovered that had not been described in the previously published NICs. The additional human remains and associated funerary objects are currently in the possession of the Field Museum of Natural History. The human remains represent a minimum of 21 individuals. No known individuals were identified. There are five additional associated funerary objects which include sherds, a stone tool, faunal remains, and adobe.

Based on material culture, architecture, and site organization, the sites have been identified as Upland Mogollon sites. Continuities of ethnographic materials, technology, and architecture indicate affiliation of Upland Mogollon sites with historic and present-day Puebloan cultures. Oral traditions presented by representatives of The Tribes support cultural affiliation with these Upland Mogollon sites in this portion of southwestern New Mexico.

Determinations Made by the U.S. Department of Agriculture, Forest Service, Gila National Forest

Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of 21 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001 (3)(A), the five objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Frank E. Wozniak, Southwestern Region and National NAGPRA Coordinator, U.S. Department of Agriculture, Forest Service, 333 Broadway Blvd., SE, Albuquerque, NM 87102, telephone (505) 842–3238, before August 22, 2011. Repatriation of the human remains and associated funerary objects to The Tribes may proceed after that date if no additional claimants come forward.

The U.S. Department of Agriculture, Forest Service, Gila National Forest is responsible for notifying The Tribes that this notice has been published.

Dated: July 14, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–18361 Filed 7–20–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: University of Colorado Museum, Boulder, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Colorado Museum has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the University of Colorado Museum. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the University of Colorado Museum at the address below by August 22, 2011.

ADDRESSES: Stephen Lekson, Curator of Anthropology, University of Colorado Museum, in care of Jan Bernstein, NAGPRA Consultant, Bernstein & Associates, 1041 Lafayette St., Denver, CO 80218, telephone (303) 894–0648.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Colorado Museum, Boulder, CO. The human remains were removed from near Laguna, Cibola County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Colorado Museum professional staff in consultation with representatives of the Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Mescalero Apache Tribe of the Mescalero

Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. Information was provided to the Kewa Pueblo, New Mexico; Ohkay Owingeh, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; and Ysleta Del Sur Pueblo of Texas.

The Fort Sill Apache Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; and White Mountain Apache Tribe of the Fort Apache Reservation, Arizona (hereinafter the ''Aboriginal Land Tribes''), do not object to the disposition of the human remains described in this notice to the Pueblo of Acoma, New Mexico, and Pueblo of Laguna, New Mexico.

History and description of the remains

On an unknown date, human remains representing a minimum of one individual were removed from Maxson site number 121, a rock fall near Laguna, Cibola County, NM, by Asa Maxson, an avocational archeologist. In 1982, Mr. Maxson donated his large archeological collection to the museum. On February 6, 2008, during an inventory, the human remains were found in the museum. No known individual was identified. No associated funerary objects are present.

Determinations Made by the University of Colorado Museum

Officials of the University of Colorado Museum have determined that:

- Based on the archeological context and the collecting history of Mr. Maxson, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of the Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; and Pueblo of Laguna, New Mexico.
- Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; and White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.
- Other credible lines of evidence indicate that the land from which the Native American human remains were removed is the aboriginal land of the Chiricahua Apache. The Chiricahua Apache are Federally-recognized as the Fort Sill Apache Tribe of Oklahoma and Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Pueblo of Acoma, New Mexico, and Pueblo of Laguna, New Mexico.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Steve Lekson, Curator of Anthropology, University of Colorado Museum, in care of Jan Bernstein, NAGPRA Consultant, Bernstein & Associates, 1041 Lafayette St., Denver, CO 80218, telephone (303) 894–0648, before August 22, 2011. Disposition of the human remains to the Pueblo of Acoma, New Mexico, and Pueblo of Laguna, New Mexico, may proceed after that date if no additional requestors come forward.

The University of Colorado Museum is responsible for notifying the Aboriginal Land Tribes that this notice has been published.

Dated: July 14, 2011.

Sangita Chari,

Acting Manager, National NAGPRA Program.

[FR Doc. 2011–18354 Filed 7–20–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Homer Society of Natural History, Pratt Museum, Homer, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Homer Society of Natural History, Pratt Museum has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Homer Society of Natural History, Pratt Museum. Repatriation of the human remains to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Homer Society of Natural History, Pratt Museum at the address below by August 22, 2011.

ADDRESSES: Dr. Cusack-McVeigh, Pratt Museum, 3779 Bartlett St., Homer, AK 99603, telephone (907) 435–3338.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Homer Society of Natural History, Pratt Museum, Homer, AK. The human remains were removed from Kachemak Bay, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Pratt Museum professional Curator and the Office of History and Archaeology for the State of Alaska, in consultation with representatives of the Kenaitze Indian Tribe, Native Village of Nanwalek (IRA Council), Ninilchik Village, Native Village of Port Graham, and Seldovia Village Tribe. Through the consultation

process, and at the request of the Kenaitze Indian Tribe, Ninilchik Indian Tribe, and the Native Village of Nanwalek (IRA Council), the human remains described in this notice will be repatriated to the Seldovia Village Tribe for reburial.

History and Description of the Remains

In 1982, a human remain representing one individual (HM–82–165–1) was found at Bishop's Beach, Kachemak Bay, in Homer, AK. On February 11, 1982, the skull was brought to the museum by Teri Dobbs. No known individual was identified. No associated funerary objects are present.

The card catalog indicates that the skull was found following a mudslide, approximately 1 mile north of Bishop's Beach. Originally identified as ''Caucasian,'' the museum now concludes that this single cranium belongs to a person of ''Caucasian admixture, possibly Caucasian-Negroid or Caucasian-Mongoloid''; the facial flattening indicates Mongoloid (Asian or Native) characteristics. Based on the general appearance and condition of the skull, death occurred anywhere from 50 to 125 years ago. Although there are no known historic cemeteries in the area, remains belonging to a Native Alaskan were subsequently recovered from the same general location as this skull. The Native Alaskan community in this area has a history of mixed European and Native Alaskan heritage. For example, populations having Russian fathers and Native Alaskan mothers were common. Therefore, the museum believes the preponderance of the evidence shows that these remains are Native Alaskan. This determination of Native Alaskan ancestry is outlined in a December 17, 2010, report produced by the Office of History and Archaeology.

In 1993, human remains representing one individual were recovered from a bluff at Bishop's Beach, Kachemak Bay, in Homer, AK, by a private individual. The human remains were given to the museum under a 1993 Gift Agreement (PM–1993–4). No known individual was identified. No associated funerary objects are present.

The archeological and historical documentary evidence show that Kachemak Bay was used by both Dena'ina Athabascan and Sugpiaq Alutiiq ancestors. The relatively recent date for these crania (estimated postmortem interval in the 50–125 year range) suggests that these two individuals may have been associated with a nearby, large early 20th century coal mining venture or an unmarked Native cemetery.

Determinations Made by the Homer Society of Natural History, Pratt Museum

Officials of the Homer Society of Natural History, Pratt Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of two individuals of mixed Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Kenaitze Indian Tribe, Native Village of Nanwalek (IRA Council), Ninilchik Village, Native Village of Port Graham, and/or Seldovia Village Tribe.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the Native American human remains should contact Dr. Cusack-McVeigh, Pratt Museum, 3779 Bartlett St., Homer, AK 99603, telephone (907) 435–3338, before August 22, 2011. Repatriation of the human remains to the Seldovia Village Tribe may proceed after that date if no additional claimants come forward.

The Pratt Museum is responsible for notifying the Kenaitze Indian Tribe, Native Village of Nanwalek (IRA Council), Ninilchik Village, Native Village of Port Graham, and Seldovia Village Tribe that this notice has been published.

Dated: July 14, 2011

Sangita Chari,

Acting Manager, National NAGPRA Program.

[FR Doc. 2011–18350 Filed 7–20–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: Fowler Museum at UCLA, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at UCLA, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Fowler Museum at UCLA.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Fowler Museum at UCLA at the address below by August 22, 2011.

ADDRESSES: Wendy G. Teeter, PhD, Curator of Archaeology, Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Fowler Museum at UCLA, Los Angeles, CA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1940, unassociated funerary objects were removed from the Van Liere Ranch Site, in Maricopa County, AZ, during excavations by J.W. Simmons. The collection was donated to the Fowler Museum at UCLA by Thomas Hinton in 1956. The 69 unassociated funerary objects are 17 clay plaques, 1 shell bead, 8 slate palettes, 1 shell, 1 ceramic sherd, 1 small ceramic bowl, 3 stone gaming pieces, 2 stone plaque fragments, 3 red clay vessels, 16 shell disc beads, 1 lead globular, 2 pieces of ochre, 4 organic fossils, and 9 awl fragments.

The Van Liere Ranch site was a burial ground with numerous Hohokam cremations and other features. This site is dated from A.D. 300—1500 based on the cultural materials found at the site, which are identified by archeologists and cultural experts as consistent with Hohokam culture. There are burial records that describe the excavation of each burial and include field and artifact photos, drawings, and site maps. Except for an infant tooth that is not associated with these funerary objects, the human remains were not removed from the ground. The unassociated funerary objects are identified based on their contextual burial designations and burial excavation notes and photos.

The Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, has submitted a repatriation claim for the cultural items described in this notice, on behalf of itself and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; and Tohono O'odham Nation of Arizona (hereinafter referred to as ''The Four Southern Tribes of Arizona''). The Four Southern Tribes of Arizona assert a ''close relationship of shared group identity that can be traced both historically and prehistorically between the Four Southern Tribes of Arizona and the people that inhabited south central Arizona and the northern region of present day Mexico from time immemorial.'' Therefore, The Four Southern Tribes of Arizona claim cultural affiliation to the cultural items based on geographical, archeological, linguistic, oral tradition, and historical evidence.

The Hopi Tribe ''claims cultural and ancestral affiliation to all human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony that were collected from Paleo-Indian, Archaic, Basketmaker, Hisatsinom (Anasazi), Mogollon, Hohokam, Sinaguan, Fremont, Mimbres, and Salado, prehistoric and historic cultures of the Southwest.''

Based on, ''Zuni oral teachings and tradition, ethnohistoric documentation, historic documentation, archaeological documentation, and other evidence, the Zuni Tribe claims cultural affiliation with prehistoric cultures of the Southwestern United States that include, and are known as, Paleo Indian, Archaic, Basketmaker, Puebloan, Freemont, Anasazi, Mogollon (including Mimbres and Jornada), Hohokam, Sinagua, Western Pueblo, and Salado.''

Therefore, the oral tradition, kinship system, and archeology all indicate that The Four Southern Tribes of Arizona, Hopi Tribe of Arizona, and the Zuni Tribe of the Zuni Reservation, New Mexico, identify with the archeological Hohokam tradition. Finally, multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the cultural items were removed is the aboriginal land of The Four Southern Tribes of Arizona, Hopi Tribe of Arizona, and the Zuni Tribe of the Zuni Reservation, New Mexico.

Determinations Made by the Fowler Museum at UCLA

Officials of the Fowler Museum at UCLA have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 69 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and The Four Southern Tribes of Arizona, Hopi Tribe of Arizona, and the Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Wendy G. Teeter, PhD, Curator of Archaeology, Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, before August 22, 2011. Repatriation of the unassociated funerary objects to the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, on behalf of The Four Southern Tribes of Arizona, may proceed after that date if no additional claimants come forward.

The Fowler Museum at UCLA is responsible for notifying The Four Southern Tribes of Arizona, Hopi Tribe of Arizona, and the Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: July 14, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–18357 Filed 7–20–11; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Light-Emitting Diodes and Products Containing Same,* DN 2831; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Samsung LED Co., Ltd. and Samsung Led America, Inc. on July 15, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-emitting diodes and products containing same. The complaint names as respondents OSRAM GmbH of Germany, OSRAM Opto Semiconductors GmbH of Germany; OSRAM Opto Semiconductors Inc. of Sunnyvale, CA and OSRAM Sylvania Inc. of Danvers, MA.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2831'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: July 18, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–18436 Filed 7–20–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–567]

Certain Foam Footwear; Final Commission Determination of Violation; Issuance of a General Exclusion Order and Cease and Desist Orders; and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation with a finding of violation of section 337, and has issued a general exclusion order directed against infringing foam footwear products, and cease and desist orders directed against respondents Double Diamond Distribution Ltd. (''Double Diamond'') of Canada, Effervescent Inc. (''Effervescent'') of Fitchburg, Massachusetts, and Holey Soles Holding Ltd. (''Holey Soles'') of Canada.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. 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 May 11, 2006, based on a complaint, as amended, filed by Crocs, Inc. (''Crocs'') of Niwot, Colorado. 71 FR 27514–15 (May 11, 2006). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (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 foam footwear, by reason of infringement of claims 1–2 of U.S. Patent No. 6,993,858 (''the '858 patent''); U.S. Patent No. D517,789 (''the '789 patent''); and the Crocs trade dress (the image and overall appearance of Crocs-brand footwear). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337, and requested that the Commission issue a permanent general exclusion order and permanent cease and desist orders. The complaint named eleven (11) respondents that included: (1) Collective Licensing International, LLC of Englewood, Colorado; (2) Double Diamond; (3) Effervescent; (4) Gen-X Sports, Inc. of Toronto, Ontario; (5) Holey Soles; (6) Australia Unlimited, Inc. of Seattle, Washington; (7) Cheng's Enterprises Inc. of Carlstadt, New Jersey; (8) D. Myers & Sons, Inc. of Baltimore, Maryland; (9) Inter-Pacific Trading Corp. of Los Angeles, California; (10) Pali Hawaii of Honolulu, Hawaii; and (11) Shaka Shoes of Kaliua-Kona, Hawaii. The Commission terminated the investigation as to the trade dress allegation on September 11, 2006. A twelfth respondent, Old Dominion Footwear, Inc. of Madison Heights, Virginia, was added to the investigation on October 10, 2006. All but three respondents have been terminated from the investigation on the basis of a consent order, settlement agreement, or undisputed Commission determination of non-infringement. The three remaining respondents are Double Diamond, Effervescent, and Holey Soles.

On April 11, 2008, the presiding administrative law judge (''ALJ'') issued his final initial determination (''ID'') finding no violation of section 337. The ALJ found non-infringement and non-satisfaction of the technical prong of the domestic industry requirement with respect to the '789 patent, and found that the '858 patent was proven invalid as obvious under 35 U.S.C. 103. The ALJ's final ID made no finding on whether either asserted patent was unenforceable due to inequitable conduct. The ALJ's final ID also included his recommendation on remedy and bonding should the Commission find that there was a

violation. On July 25, 2008, after review, the Commission affirmed the ALJ's final ID with certain modifications and clarifications, and terminated the investigation with a finding of no violation of section 337. The Commission took no position regarding the issue of enforceability of the '858 and '789 patents. On February 24, 2010, the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') issued its judgment overturning the Commission's findings regarding invalidity of the '858 patent, and non-infringement/lack of domestic industry concerning the '789 patent. *See Crocs, Inc.* v. *United States Int'l Trade Comm'n,* 598 F.3d 1294, 1311 (Fed. Cir. 2010). The Federal Circuit also specifically ''remand[ed] the investigation for a determination of infringement of the '858 patent and any appropriate remedies.'' *Id.* On July 6, 2010, the Commission remanded the investigation to the ALJ to decide the remaining issue of enforceability of the patents.

On February 9, 2011, the ALJ issued his remand ID finding that the asserted patents were not unenforceable. On February 25, 2011, respondents Effervescent and Double Diamond filed both a joint petition for review of the remand ID and a motion for leave to file the petition two (2) days late. On March 4, 2011, the Commission issued an order declining to grant the motion, but without prejudice to respondents refiling their motion stating good cause for the enlargement of time. On March 16, 2011, respondents Effervescent and Double Diamond filed a joint motion for an enlargement of the time for filing petitions for review of the remand ID. On March 18, 2011, the Commission issued an order granting the motion for an enlargement of time and making responses due on March 28, 2011. On March 28, 2011, Crocs and the Commission investigative attorney (''IA'') each filed a brief in response to respondents' petition for review.

On April 25, 2011, the Commission issued notice of its determination not to review the ALJ's remand ID and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. *See* 76 FR 24052–53 (April 29, 2011). The Commission's notice also included its determination to reaffirm the ALJ's previous ruling that claims 1 and 2 of the '858 patent are infringed by Effervescent's accused products, and that claim 2 of the '858 patent is infringed by Double Diamond's accused products. *See* 73 FR 35710–11 (June 24, 2008); Remand ID at 2 (February 9, 2011) (*citing* Final ID at 121 (April 11, 2008)); Comm'n Op. at 3–4, n. 1 (July 25, 2008). These actions, along with the Federal Circuit's decision, resulted in a finding of a violation of section 337 with respect to both asserted patents by Double Diamond and Effervescent. Holey Soles was found in violation with respect to the '789 patent based on the Federal Circuit's reversal of non-infringement and lack of domestic industry as to this patent. *See Crocs,* 598 F.3d at 1311.

On May 6 and 13, 2011, respectively, complainant Crocs and the IA filed briefs and reply briefs on remedy, the public interest, and bonding. Also, on May 6 and 13, 2011, respectively, respondent Effervescent filed a brief and reply brief on these issues. Respondent Double Diamond filed a reply brief on May 13, 2011.

The Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is both: (1) A general exclusion order prohibiting the unlicensed entry of foam footwear that infringe one or more of (i) claims 1–2 of the '858 patent, and (ii) the claimed design of the '789 patent; and (2) cease and desist orders prohibiting Double Diamond, Effervescent, and Holey Soles from conducting any of the following activities in the United States: Importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, foam footwear that infringe one or more of (i) claims 1 or 2 of the '858 patent, and (ii) the claimed design of the '789 patent.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the general exclusion order or the cease and desist orders. Finally, the Commission determined to set a bond of $0.00 for Double Diamond's covered products, a bond of $0.01 per pair of shoes for Holey Soles' covered products, a bond of $0.05 per pair of shoes for Effervescent's covered products, and a bond of 100% of the entered value (for all other covered products) to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

Issued: July 15, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–18338 Filed 7–20–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–717]

In the Matter of Certain Digital Imaging Devices and Related Software; Notice of Commission Decision Not To Review the ALJ's Final Initial Determination Finding No Violation of Section 337; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') final initial determination (''ID'') issued on May 12, 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 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 May 19, 2010, based on a complaint filed by Apple Inc. of Cupertino, California (''Apple''). 75 FR 28058 (May 19, 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 digital imaging devices and related software by reason of infringement of various claims of United States Patent Nos. 6,031,964 and RE 38,911. The complaint named Eastman Kodak Company of Rochester, New York (''Kodak'') as respondent.

On May 12, 2011, the ALJ issued his final ID, finding no violation of section 337 by Kodak 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 '964 patent. The ALJ also found that none of the cited references rendered the asserted claims obvious, and that Kodak is not a co-owner of the patent. Regarding the '911 patent, the ALJ found that the accused products do not infringe its asserted claims. The ALJ also found that the prior art anticipates and invalidates the asserted claims and that Kodak is not a co-owner of the patent. The ALJ concluded that an industry exists within the United States that practices the '911 patent but that a domestic industry does not exist with respect to the '964 patent as required by 19 U.S.C. 1337(a)(2).

On June 1, 2011, Apple filed a petition for review of the ALJ's findings related to the '964 patent. Apple did not petition for review of any of the ALJ's findings related to the '911 patent. On June 9, 2011, the Commission investigative attorney (''IA'') and Kodak filed respective responses to Apple's petition for review. Neither the IA nor Kodak filed petitions or contingent petitions for review of the ID.

Having examined the record of this investigation, including the ALJ's final ID, the petition for review, and the responses thereto, the Commission has determined not to review the subject ID.

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 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46).

By order of the Commission.

Issued: July 18, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–18435 Filed 7–20–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act, Sections 113(b) and 304(a), 42 U.S.C. 7413(b), 7604(a)

Notice is hereby given that on July 13, 2009, a proposed Second Amendment Consent Decree in United States of America; Commonwealth of Pennsylvania; City of Philadelphia; State of Oklahoma; and State of Ohio v. Sunoco, Inc., Civil Action 05–02866, was lodged with the United States District Court for the Eastern District of Pennsylvania.

This Second Amendment to the Consent Decree amends the Consent Decree entered by the Court on March 20, 2006 as well as the First Amendment to the Consent Decree entered by the Court on June 3, 2009. Specifically, the Second Amendment changes the date of completion of installation of pollution control equipment from June 2013 to June 2015. The second Amendment requires Sunoco to perform other pollution control measures in the interim time period, including lowering emissions limits and installing controls on other equipment to achieve greater reduction of emissions.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America; Commonwealth of Pennsylvania; City of Philadelphia; State of Oklahoma; and State of Ohio* v. *Sunoco, Inc.,* Civil Action 05–02866, D.J. Ref. 90–5–2–1–1744/1.

The Amended Consent Decree may be examined at the Office of the United States Attorney, Zane D. Memeger, 615 Chestnut Street, Ste. 1250, Philadelphia, PA 19106, (215) 861–8200.

During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–18363 Filed 7–20–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that on July 13, 2011, a proposed Consent Decree was lodged with the District Court of Massachusetts, in *United States* v. *Polyfoam Corp.,* Civil Action No. 4:11–cv–40134.

In this action, the United States sought penalties and injunctive relief for the Defendant's violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.,* at its molded foam manufacturing facility in Northbridge, Massachusetts. To resolve the United States' claims, the Defendant will pay a penalty of $127,500, and will install air emission controls at its plant to reduce its emissions of Volatile Organic Compounds into the air.

The Department of Justice will receive comments relating to the proposed Consent Decrees for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the matter as *United States* v. *Polyfoam Corp.,* DOJ Ref. No. 90–5–2–1–09522.

The proposed Consent Decree may be examined at the Office of the United States Attorney, United States Courthouse, 1 Courthouse Way, Suite 9200, Boston, MA 02210, and at the United States Environmental Protection Agency, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109.

During the public comment period, the proposed agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the proposed agreements may also be obtained by mail from the Consent

Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting from the Consent Decree Library a copy of the consent decree for *United States* v. *Polyfoam Corp.,* Civil Action No. 4:11–cv–40134, please enclose a check in the amount of $9.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–18332 Filed 7–20–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Developing a Method for Conducting an Internal Evaluation of Gender-Informed Policy and Practice

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) is seeking applications from organizations, groups, or individuals to enter into a cooperative agreement for an 18-month period to develop and pilot a methodology for correctional organizations to conduct an internal evaluation of their current policy and practice for working with women offenders. This methodology must cover a broad range of domains, such as leadership, external collaboration, management and operations, sanctions, assessment and case planning, and programs and services. The methodology must be concise but informative enough to be used by an organization with an understanding of evidence-based practices that incorporate gender-informed research and information. Additional consideration may be given to an applicant who can incorporate into the methodology those elements applicable to institutional and community corrections environments. The methodology should also include supplemental information that addresses an organization's readiness for change and a template that will help organizations initiate an internal strategic planning process. This award will also cover the piloting of the methodology, which should include both onsite work and use of Web-based technology, post-pilot revisions to the methodology based on feedback, and a design for conducting a process evaluation to measure the efficacy of the methodology.

The goal of this solicitation is to create and provide a methodology for organizations to (1) Conduct an abbreviated internal evaluation of their policies and practices specific to women and (2) begin to plan strategically to initiate the type of change required within their agency to reach their desired objectives. Information gathered by organizations using this methodology could also form the basis for resource requests from funding entities, formulation of technical assistance requests to external sources, and a vehicle to advance internal quality assurance. The awardee will work closely with designated NIC staff on all aspects of the project to ensure understanding of and agreement on the scope of work to be performed, and to work with other identified experts as well who are recognized for their expertise and practical experience in working with justice-involved women.

To be considered, applicants must demonstrate, at a minimum: In-depth knowledge of research and practice regarding gender-informed (women) and evidence-based practices, organizational readiness, strategic planning, and process evaluation; In-depth knowledge of the practices, programs, and complexities specific to the operation of women's correctional facilities and awareness of the issues relevant to women on community release and under supervision; In-depth knowledge about the risks, needs, strengths, and capacity for resiliency with justice-involved women; Specific examples of expertise in directing project design and implementation; Demonstrated ability to work collaboratively with other experts in the field of gender-informed practices; Ability and capacity to conduct Web-based events.

DATES: Applications must be received by 4 p.m., EDT, August 24, 2011.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First St., NW., Room 215, Washington, DC 20534.

Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First St., NW., Washington, DC 20534. At the front security desk, dial 7–3106, ext. 0 for pickup. Faxed or e-mailed applications will not be accepted. Electronic applications can only be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and links to the required application forms can be downloaded from the NIC Web site at *http://www.nicic.gov.*

All technical or programmatic questions concerning this announcement should be directed to Maureen Buell, Correctional Program Specialist, National Institute of Corrections, Administrative Division. Ms. Buell can be reached directly at 1–800–995–6423 ext. 40121 or by e-mail at *mbuell@bop.gov.* In addition to the direct reply, all questions and response will be posted on NIC's Web site at *http://www.nicic.gov* for public review (the names of those submitting questions will not be posted). The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation. Only questions received by 12 p.m. (EDT) on August 19, 2011 will be answered.

SUPPLEMENTARY INFORMATION:

Overview: The goal of the solicitation is to provide organizational leaders and managers across the corrections continuum (jails, prisons, community corrections) with a method to (1) Begin to internally evaluate the existence of internal policy and practice and their applicability to justice-involved women by using evidence-based practices and gender-informed research and knowledge as a foundation, (2) identify gaps and strengths in current services, and (3) provide sufficient guidance for an organization to begin to strategize desired internal change. NIC has incorporated much of the evidence-based, gender-informed research and knowledge into a variety of products that can be accessed on the NIC Web site at *http://www.nicic.gov* and on NIC's women offender Web page at *http://www.nicic.gov/womenoffenders.*

Background: NIC has provided a broad range of services to organizations that wanted to develop, enhance, and/or revise their policies and practices to better manage their increasing population of justice-involved women. Systems are often overwhelmed with the increasing numbers of women, surpassing the rate at which men have been entering the system. From 1995 to 2005, the total number of female prisoners increased 57% compared to a 34% increase in male prisoners (Harrison & Beck (2006) *Prison and Jail Inmates at Midyear 2005* (NCJ Publication No. 213133). The increasing female population has presented

numerous challenges to the current corrections paradigm, including overuse of higher security beds driven by classification systems not validated for women; a lack of appropriate and effective resources targeting women's assessed risks and needs; and the low rates of success experienced by this population, evidenced by the high rate of returns due to technical violations rather than new convictions. Women offenders experience all of this despite the fact that, except for a small percentage, justice-involved women present lower rates of both institutional and community safety risk. Some current correctional practices also have had the unintended consequence of ''driving women deeper into the system.''

In an attempt to deal with these challenges, organizations often will make piecemeal change (offer a parenting program or have female facilitators lead established programs), which has limited positive impact with women on items that are measured (*e.g.,* recidivism data, program participation, numbers and types of disciplinary reports). However, as more organizations become familiar with the emerging research, they are interested in making broader, long lasting change but often do not know where to start. To try to understand the problem more thoroughly, NIC took a current and retrospective look at the nature of technical assistance requests specific to justice-involved women and noted a consistent theme. Although the details of the requests varied, they all, in some way, were requesting assistance to improve management of their women's population. The following are examples of common technical assistance requests: (a) Mission has changed. (b) The men have moved to another facility and women are being transferred to a facility that was designed for and has historically housed only male offenders. (c) A jurisdiction is building a new facility for women and would like it to be the best in the country, incorporating the gender-informed research. (d) Staff receive one hour of training in the academy specific to working with women. They want to design an effective training program that they can use in-house for their staff that is specific to their needs and population. (e) Women are surpassing men with their rates of technical violations resulting in revocations and returns to prison. They want NIC to assess their policies and procedures for women and determine whether they are effective. (f) There are few options for housing. Women at various custody levels are housed together. Although the jurisdiction hasn't had any major assaultive events, they need assistance in managing the population given their current environment. (g) Women are emerging from incarcerative settings with few resources but significant responsibilities. Many of them are caring for children with substandard housing, no job prospects or visible source of income; parole or court-ordered conditions of supervision with no transportation; and really little more than what is on their backs. How can a jurisdiction work successfully with the challenges reentering women present? (h) Current classifications systems are not accurately reflecting risk and need for women. The facility ends up overriding the instruments. They need assistance in reviewing their current assessment and classifications tools for women and want recommendations for improvement. (i) The jurisdiction is overwhelmed with the needs of its mental health population. They know they need to include trauma-informed practices to both benefit the women offenders and their staff who interact with them daily.

This is but a small sampling of requests over the years, but it was the impetus for collecting and organizing the emerging research and knowledge on women offenders.

Fortunately, as the rate of women entering our nation's justice systems was dramatically increasing, also emerging was a body of work that has had significant impact on the field of corrections. Evidence-based practices or risk reduction research, considered to be gender-neutral, and the gender-informed research that has identified and articulated specific areas that are unique to and/or occur with increased frequency with women. The latter body of work has provided opportunities to sharpen our knowledge and practices regarding areas that contribute to risk for women. NIC has paid considerable attention to these emerging bodies of work and has collected and organized this information into a set of domains that impact a wide range of practices in women's facilities and in community corrections environments. This information is continuously incorporated into NIC's current and emerging products and services and has informed technical assistance to the field.

The development of an internal evaluation methodology that contains the items drawn from both the evidence-based and gender-informed bodies of research and is in a concise and accessible format provides an opportunity for agency leadership and management to assess policy and practices that can contribute to or detract from an organization's overall effectiveness in managing justice-involved women. It is also a tool that can prepare an organization for requesting technical assistance, additional funding, or enhancing internal quality assurance.

Purpose: This methodology will be concise and informative, incorporating evidence-based and gender-informed items to be used by an organization to reasonably conduct an internal evaluation of their policy and practice specific to their population of justice-involved women. Ideally this methodology will inform policy and practice in the operation of a women's facility and in effectively supervising women in a community corrections environment.

Scope of Work: It will include an overview of the methodology, sources of items chosen for inclusion, description of the format, description of how an organization should apply the methodology, including the tasks of the internal team, a description of the piloting process, and instructions on how an organization will rate or prioritize the items as they are evaluated internally. Also included in the methodology is guidance to correctional organizations on assessing organizational readiness and strategic planning for the purposes of advancing the work with their population of justice-involved women based on the findings of their internal evaluation. Finally, the applicant must describe a process for how a pilot site or sites will be chosen. As stated, the final product will reflect revisions made to the methodology after a pilot(s) has been completed and will include a plan for process evaluation. The awardee must submit a detailed work plan with timelines and milestones for accomplishing project activities to the assigned NIC correctional program specialist (CPS) for approval prior to any work being performed under this agreement and must designate a point of contact that will serve as the conduit of information between the CPS and the awardee.

Examples of issues for applicants to consider for this project include creation of methodology that is concise and easy to understand yet provides enough detail to ensure that a wide range of practices are evaluated relative to the research and knowledge on justice-involved women. The intent of this solicitation is to assist agencies in accurately evaluating internal practices for working with women, with improved management and outcomes as

an objective. This type of evaluation runs the risk of resulting in a ''halo effect.'' That is, agencies are at risk of undermining objectivity when an internal team looks at their own internal practices. In order for an agency to conduct an internal evaluation of their practices, initial work must be completed, including accessing relevant data, knowledge of current policy and practice, and a general vision of what the agency would like to achieve. Internal evaluators may have limited knowledge about evidence-based and gender-informed practice for women offenders, may not believe there should be differences in policy and practice between male and female populations or could misinterpret the intent of items in the methodology. The applicant must consider the challenges identified above and propose strategies for successfully addressing those areas within the context of this project. Applicants are encouraged to identify and address additional issues and challenges that they believe will impact the successful development of this project.

Document Length: The length of the document should be determined by content—brevity and clarity are encouraged.

Intended Audience: The primary audience for this product is the leadership and management of correctional organizations. The document will also be useful for management of correctional institutions for women and community corrections organizations in the supervision of women.

Distribution: This product is intended to be distributed widely and made available to the corrections field. It will be available on the NIC Web site and available free of charge through the NIC Information Center.

Final Product: The completed materials will have received editing from a professional editor. Ideally, materials will be electronically based. The awardee must follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the ''General Guidelines for Cooperative Agreements,'' which will be included in the award package. The awardee will deliver the final product to NIC in hard copy and on disk in Word format. NIC will be responsible for the final editing process and document design, but the awardee will remain available during this time to answer questions and to make revisions to the document. The awardee must also ensure that all products meet NIC's standards for accessibility and Section 508 compliance.

Meetings: The cooperative agreement awardee will attend an initial meeting with NIC staff for a project overview and preliminary planning. This will take place shortly after the cooperative agreement is awarded and will be held in located to be mutually determined. Washington, DC. Additionally, the awardee should plan to meet with NIC staff routinely as agreed upon by NIC and the awardee during the course of the cooperative agreement. Meetings will be held no less than quarterly and may be conducted via webinar or in person as agreed upon by NIC and the awardee.

Application Requirements: An application package must include OMB Standard Form 424, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year under which the applicant operates (*e.g.* July 1 through June 30); an outline of projected costs with the budget and strategy narratives described in the announcement. The following additional forms must also be included: OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (both available at *http://www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/PDF/certif-frm.pdf*).

Applications should be concisely written, typed double spaced, and reference the NIC opportunity number and title referenced in this announcement. If you are hand delivering or submitting via Fed-Ex, please include an original and three copies of your full proposal (program and budget narrative, application forms, assurances, and other descriptions). The original should have the applicant's signature in blue ink. Electronic submissions will be accepted only via *http://www.grants.gov.*

The project summary/abstract portion of the application should be brief and include: A summary of the application's project description. The summary must be clear, accurate, and concise without reference to other parts of the application; A brief description of the critical elements of the proposed project, including the goals and objectives for the project and how strategies proposed meet those goals and objectives.

Please place the following at the top of the abstract: Project title, applicant name (legal name of applicant organization), mailing address, e-mail address, Web site address and contact phone numbers, including voice and fax, where applicable.

The narrative portion of the application should include at a minimum: A statement indicating the applicant's understanding of the project's purpose, goals and objectives. The applicant should state this in language other than that used in the solicitation (*i.e.,* do not simply repeat the wording from the solicitation); *Project design and implementation:* This section should describe key design points, implementation issues, and opportunities; *Project evaluation:* This section will describe the design of the proposed process evaluation; *Project Management:* Charts of measurable milestones and timelines for the completion of each milestone; *Capabilities and competencies:* This section should describe the qualifications of the applicant organization and any partner organizations to do the work proposed and the expertise of key staff to be involved in the project. Attach resumes that document relevant knowledge, skills, and abilities to complete the project for the principals and staff members assigned to the project; *Budget:* The budget should detail all costs for the project, show consideration for all contingencies for the project, a commitment to work within the proposed amount, and demonstrate the ability to provide deliverables reasonably according to schedule.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for the activities that are linked to the desired outcome of the project. The funding amount should not exceed $120,000.

Eligibility of Applicants: An eligible applicant is any state or general unit of government, private agency, educational institution, organization, individual, or team with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope.

Review Considerations: Applications will be reviewed by a team. Among the criteria used to evaluate the applications are indication of a clear understanding of the project requirements; background, experience, and expertise of the proposed project staff, including any sub-contractors; effectiveness of an innovative approach to the project;

clear, concise description of all elements and tasks of the project, with sufficient and realistic timeframes necessary to complete the tasks; technical soundness of project design and methodology; financial and administrative integrity of the proposal, including adherence to Federal financial guidelines and processes; a sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work with the budget proposed; and indication of availability work with NIC staff.

Programmatic: 40 Points.

Are all of the elements and tasks as outlined in the proposal fully and clearly addressed? Is there a clear description of how each project activity will be accomplished, including major tasks; the strategies to be employed; required staffing; responsible parties, and other required resources? Are there any unique or exceptional approaches, techniques, or design aspects proposed that will enhance the project?

Project Management, Administration and Budget: 30 Points.

Does the applicant identify reasonable objectives, milestones, or measures to track progress? Are the proposed management and staffing plans clear, realistic, and sufficient to carry out the project? Is the applicant willing to meet with NIC, at a minimum, as indicated in the solicitation for this cooperative agreement? Is the proposed budget realistic, does it provide sufficient cost detail/narrative, and does it represent good value relative to the anticipated results? Does the application include a chart that aligns the budget with project activities along a timeline with, at minimum, quarterly benchmarks? In terms of program value, is the estimated cost reasonable in relation to work performed and project products?

Organizational and Project Staff Background: 30 Points.

Do the skills, knowledge, and expertise of the organization and the proposed project staff demonstrate a high level of competency to carry out the tasks? Does the applicant/organization have the necessary experience and organizational capacity to carry out all goals of the project? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project and a clear structure to ensure effective coordination?

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR). Applicants can obtain a DUNS number at no cost by calling the dedicated toll-free request line at 800–333–0505. Applicants who are sole proprietors should dial 866–705–5711 and select option #1.

Applicants may register in the CCR online at the CCR Web site: http://www.ccr.gov. Applicants can also review a CCR handbook and worksheet at this Web site.

Number of Awards: One.

NIC Opportunity Number: 11AD04.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2011–18409 Filed 7–20–11; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Random Assignment Study To Evaluate Workforce Investment Act Adult and Dislocated Worker Programs; Request for Comment

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL or the Department) is prepared to conduct an evaluation to provide rigorous, nationally representative estimates of the net impacts of intensive services and training provided under the Workforce Investment Act (WIA) Adult and Dislocated Worker Programs. The Department has determined that it is in the public interest to use a random assignment impact methodology for the study. In the local workforce investment areas (LWIAs) randomly selected to participate in this evaluation, all applicants for intensive services and training under the WIA Adult and Dislocated Worker programs will be required to participate in the study during a 12–18 month period. The Department is soliciting comments concerning the Department's plan to carry out the study.

DATES: Written comments on the plan to require consent to participate in the study during the designated LWIAs' study enrollment periods must be received by the office listed in the addresses section below on or before August 4, 2011.

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

- *Mail or Hand Delivery/Courier:* Please submit all written comments (including disk and CD–ROM submissions) to Eileen Pederson, U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room N–5641, Washington, DC 20210. Commenters are advised that mail delivery in the Washington area may be delayed due to security concerns. Hand-delivered comments will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the date specified above.
- *Facsimile:* Please send comments to Eileen Pederson's attention, at fax number (202) 693–2766.
- *E-mail:* Please send comments to *pederson.eileen@dol.gov.*

Please submit your comments by only one method. The Department will not review comments received by means other than those listed above or that are received after the comment period has closed.

Comments: All comments on this notice will be retained by the Department and released upon request via e-mail to any member of the public. The Department also will make all the comments it received available for public inspection by appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of this notice available, upon request, in large print, Braille and electronic file on computer disk. The Department will consider providing the notice in other formats upon request. To schedule an appointment to review the comments and/or obtain the notice in an alternative format, contact the Office of Policy Development and Research at (202) 693–3700 (this is not a toll-free number). You may also contact this office at the address listed above.

The Department will retain all comments received without making any changes to the comments, including any personal information provided. If requested, the comments will be released to the public. The Department cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will be released with the comment if the comments are requested. It is the commenter's responsibility to safeguard his or her information. If the comment is submitted by e-mail, the e-mail

addresses of the commenter will not be released.

FOR FURTHER INFORMATION CONTACT: Eileen Pederson, U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210. Telephone number: (202) 693–3647 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

I. Background

The Workforce Investment Act of 1998 (WIA) brought formerly fragmented public and private employment services together in a single location within each community and made them accessible to a wider population than did prior employment and training service delivery systems. The recent recession, high unemployment rate and limited Federal resources serve as a reminder of the importance of ensuring that the services provided to people who are out of work and desiring to transition to new employment are as effective as possible. In order to improve the management and effectiveness of WIA services and related activities, section 172 of the WIA requires the Department to continually evaluate WIA programs and activities. These evaluations must ''utilize appropriate methodology and research designs, including the use of control groups chosen by scientific random assignment methodologies.'' Congress, the Office of Management and Budget, and the Government Accountability Office have called on DOL to conduct an evaluation now in order to learn if WIA-funded intensive services and training are as effective as they can be. Accordingly, ETA is conducting a multisite control group evaluation to provide rigorous, nationally representative estimates of the net impacts of WIA intensive services and training provided under the Adult and Dislocated Worker Programs.

Generally speaking, intensive services are services that involve staff assistance and include assessments, counseling, and job placement. Training includes education and occupational skills building. This evaluation will offer policymakers, program administrators, and service providers information about the relative effectiveness of Adult and Dislocated Worker intensive services and training, how the effectiveness varies by target population, and how the services and training are implemented. The study will also produce estimates of the benefits and costs of these services and training. The study's key goal is to generate findings that are applicable to the national WIA Adult and Dislocated Worker programs.

To obtain rigorous, nationally representative estimates of WIA's effectiveness for adults and dislocated workers, the Department plans to use a random assignment impact methodology for the evaluation. The evaluation will take place in approximately 30 randomly selected LWIAs. WIA applicants in the selected LWIAs who are eligible for intensive services will be randomly assigned to one of three groups. The three research groups to which they will be assigned are: (1) The full-WIA group—adults and dislocated workers in this group can receive any WIA services and training for which they are eligible, (2) the core-and-intensive group—adults and dislocated workers in this group can receive any WIA services for which they are eligible other than training, and (3) the core-only group—adults and dislocated workers in this group can receive only WIA core services but no intensive services or training. Overall, 94 percent of all WIA applicants in the participating LWIAs who are eligible for and interested in intensive services or training will be assigned to the full-WIA group.

In the LWIAs randomly selected to participate in the evaluation, all applicants for intensive services and/or training under the WIA Adult and Dislocated Worker programs will be asked to participate in the study during the 12–18 month study enrollment period. They will be informed of the evaluation, provided an opportunity to ask questions or seek clarification of their role and responsibilities should they agree to participate, and then required to give their consent to participate. Applicants who do not consent to participate in the study will be allowed to receive core services only. The sample intake period will range between 12 and 18 months at each site. A total of about 68,000 WIA adult and dislocated worker program applicants will be randomly assigned to the evaluation.

The Department has determined that it is in the public interest to use a random assignment impact methodology. Random assignment is generally viewed as the best and most feasible design for credibly and reliably answering questions about the effectiveness of social programs and policy interventions. This is because when implemented carefully, random assignment creates groups that are, on average, identical in their characteristics before the intervention. Hence, any differences in the employment outcomes of customers in the three research groups can be confidently attributed to differences in the service intervention. Moreover, because of funding limitations, not all people who are eligible for, and could benefit from, WIA services can receive them. As a result, the total number of people who are served will not be affected by the study.

The Department recognizes that this design will assign some applicants to groups that limit their access to WIA services. However, the study was designed to balance two objectives: (1) To fulfill the mandate for a rigorous evaluation of WIA and (2) to maximize the number of customers in the study who have access to the full set of WIA-funded services. Since the three research groups will be identical except for their ability to access different levels of WIA-funded assistance, any differences in outcomes between the groups will be attributable to the WIA services. To meet the second objective, the study design allows most adult and dislocated worker customers to have access to the full set of WIA-funded assistance. Only a small percentage of customers will be restricted to receiving core services or core-and-intensive services. Those customers who are assigned to either the core only or core-and-intensive only research groups will be eligible to apply for intensive services and training 15 months after enrollment into the study.

To protect the rights and welfare of One-Stop Career Center customers who agree to participate in the evaluation, the evaluation team, consisting of researchers from Mathematica Policy Research and MDRC, submitted the WIA Evaluation design to MDRC's Institutional Review Board (IRB) for concurrence. On June 17, 2010, the IRB determined this study to be of minimal risk and unanimously approved it.

II. Desired Focus of Comments

Currently, DOL is soliciting comments concerning the Department's intent to carry out the random assignment study described above: for the limited enrollment period, applicants for WIA intensive and training services would be required to consent to participate in the study, where they would be randomly assigned to one of the three research groups. Applicants who do not consent to participate would receive core services. This requirement would apply only to applicants for intensive services and training provided in the limited

number of LWIAs selected to participate in this evaluation.

The Department seeks comments focused on whether there is a methodology that would yield as credible and reliable an evaluation of the WIA program as random assignment, but avoids adverse affect on the study participants. The Department also welcomes comments that suggest ways to more effectively minimize any adverse impact on the study participants who participate in the study described above.

III. Current Actions

Following receipt of comments in response to this request, ETA will adjust, as appropriate, the approach for temporarily requiring applicants for WIA intensive services and training at selected LWIAs to participate in random assignment. Comments submitted in response to this request will also become a matter of public record.

Signed: at Washington, DC this 15th day of July, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–18355 Filed 7–20–11; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Emergency Provision Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit emergency provision for hazardous waste stored in Antarctica at a location other than a permanent station for more than 12 months due to an emergency, as specified by § 671.17.

SUMMARY: The Program of Environment Health and Safety (PEHS) in the Office of Polar Programs (OD/OPP), in accordance with § 671.17, is giving notice that an emergency relating to considerations of human health and safety caused hazardous waste to be stored in a location other than a permanent station for more than 12 months.

Hazardous waste in the form of batteries and contaminated snow from small glycol and oil spills has been stored at the Antarctica's Gamburtsev Province Project South camp (AGAP) since the late 2009 camp closeout. The waste was packaged into 42 sealed containers, with lithium and lead acid batteries filling 21 of the containers. The remaining 21 containers were filled with waste oil, soiled absorbents, contaminated snow from small spills, and approximately 5 gallons of glycol in a 55 gallon drum. The waste was strapped to plastic air force pallets and placed in a storage berm. At the time of packing, all containers were sound and there was no evidence of leaks. No one has been back to AGAP since the waste was stored.

The South Pole Traverse (SPoT) was scheduled to remove this waste during the 2010–2011 season. The trip to AGAP was scheduled as a side trip between arriving at South Pole and starting the return trip to McMurdo. SPoT encountered bad storms on the way to South Pole. It arrived more than 1 week late, with one tractor incapacitated. With one less tractor to pull the load, the vehicles were travelling much more slowly. Despite this, SPoT set out for AGAP. However, 50 miles into the trip, a second tractor became incapacitated; further slowing progress and limiting the ability of SPoT to self rescue should they have further problems.

If SPoT proceeded as planned they would have been in the field late in the season when many of the planes have left and Search and Rescue (SAR) capabilities are significantly reduced. There was concern that SPoT would not arrive in McMurdo before the last plane left the continent for the season. To avoid this potentially dangerous situation, the trip to AGAP to collect the hazardous waste was cancelled.

In the 2011–2012 season SPoT's priority will be to collect the waste at AGAP. Spot will depart McMurdo for South Pole one week earlier than this past season to allow a greater buffer for weather and other delays. Further, SPoT will travel to AGAP with an extra tractor and driver to accommodate any breakdowns and help speed progress.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale at (703) 292–7420.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2011–18372 Filed 7–20–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0092]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on May 6, 2011.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 536, ''Operator Licensing Examination Data.''

3. *Current OMB approval number:* 3150–0131.

4. *The form number if applicable:* NRC Form 536.

5. *How often the collection is required:* Annually.

6. *Who will be required or asked to report:* All holders of operating licenses for nuclear power reactors under the provision of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, and all holders of or applicants for a limited work authorization, early site permits, or combined license issued under 10 CFR Part 52, ''Licenses, Certifications and Approval for Nuclear Power Plants.''

7. *An estimate of the number of annual responses:* 110.

8. *The estimated number of annual respondents:* 110.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 110.

10. *Abstract:* The NRC is requesting renewal of its clearance to annually request all commercial power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for initial operator licensing examinations; (2) the estimated dates of the examinations; (3) if the examinations will be facility developed or NRC developed; and (4) the estimated number of individuals that will participate in the Generic Fundamentals Examination (GFE) for that calendar year. Except for the GFE, this information is used to plan budgets and

resources in regard to operator examination scheduling in order to meet the needs of the nuclear power industry.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 22, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0131), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine_J._Kymn@omb.eop.gov* or submitted by telephone at 202–395–4638.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 15th day of July, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–18333 Filed 7–20–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0053]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on May 6, 2011.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Notice of Enforcement Discretion (NOEDs) for Operating Power Reactors and Gaseous Diffusion Plants (GDP) (NRC Enforcement Policy).

3. *Current OMB approval number:* 3150–0136.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* Nuclear power reactor licensees and gaseous diffusion plant certificate holders.

7. *An estimate of the number of annual responses:* 21.

8. *The estimated number of annual respondents:* Approximately 11.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,705.

10. *Abstract:* The NRC's Enforcement Policy addresses circumstances in which the NRC may exercise enforcement discretion. A specific type of enforcement discretion is designated as a NOED and relates to circumstances which may arise where a nuclear power plant licensee's compliance with a Technical Specification Limiting Condition for Operation or other license conditions would involve: (1) An unnecessary plant shutdown; (2) performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions; or (3) unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant, circumstances may arise where compliance with a Technical Safety Requirement or other condition would unnecessarily require a total plant shutdown, or, compliance would unnecessarily place the plant in a condition where safety, safeguards, or security features were degraded or inoperable.

A licensee or certificate holder seeking the issuance of a NOED, must document the safety basis for the request, including: an evaluation of the safety significance and potential consequences of the proposed request, a description of proposed compensatory measures, a justification for the duration of the request, the basis for the licensee's or certificate holder's conclusion that the request does not have a potential adverse impact on the public health and safety, that there will be no adverse consequences to the environment, and any other information the NRC staff deems necessary before the NRC staff makes a decision whether to exercise discretion.

In addition, the NRC's Enforcement Policy includes a provision allowing licensees to voluntarily adopt fire protection requirements contained in the National Fire Protection Association Standard 805, ''Performance Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition'' (NFPA 805). Licensees who wish to implement the risk-informed process in NFPA 805 must submit a letter of intent (LOI) to the NRC. Licensees who wish to withdraw from the NFPA 805 risk-informed process must submit a letter of retraction.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 22, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0136), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine_J._Kymn@omb.eop.gov* or submitted by telephone at 202–395–4638.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 15th day of July, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–18334 Filed 7–20–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0057]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on May 23, 2011 (76 FR 29804).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 75, Safeguards on Nuclear Material Implementation of US/IAEA Agreement.

3. *Current OMB approval number:* 3150–0055.

4. *The form number if applicable:* Not Applicable.

5. *How often the collection is required:* Reporting is done when specified events occur. Recordkeeping for nuclear material accounting and control information is done in accordance with specific instructions.

6. *Who will be required or asked to report:* Licensees of facilities on the U.S. eligible list who have been selected by the International Atomic Energy Agency (IAEA) for reporting or recordkeeping activities.

7. *An estimate of the number of annual responses:* 8 (2 responses for reporting + 6 recordkeepers).

8. *The estimated number of annual respondents:* Six, two of which perform both reporting and recordkeeping and four of which perform recordkeeping only.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 2,400 (6 Respondents x 400 hours per response).

10. *Abstract:* 10 CFR Part 75 requires selected licensees to permit inspections by IAEA representatives, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. These licensees will also follow written material accounting and control procedures, although actual reporting of transfer and material balance records to the IAEA will be done through the U.S. State system (Nuclear Materials Management and Safeguards System, collected under OMB clearance numbers 3150–0003, 3150–0004, 3150–0057, and 3150–0058.) The NRC needs this information to implement its responsibilities under the US/IAEA agreement.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 22, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0055), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine_J._Kymn@omb.eop.gov* or submitted by telephone at 202–395–4638.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 15th day of July, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–18335 Filed 7–20–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–407; NRC–2011–0153]

The University of Utah; Facility Operating License No. R–126; Notice of Acceptance for Docketing of Application and Opportunity To Provide Comments and/or Request a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of acceptance for docketing.

DATES: Comments must be filed by September 19, 2011. A request for a hearing must be filed by September 19, 2011. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by August 1, 2011.

ADDRESSES: Please include Docket ID NRC–2011–0153 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0153. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory

Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0153.

FOR FURTHER INFORMATION CONTACT: Geoffrey Wertz, Project Manager, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. *Telephone:* 301–415–0893; *fax number:* 301–415–1032; *e-mail: Geoffrey.Wertz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Facility Operating License No. R–126 (''Application''), which currently authorizes the University of Utah (the licensee) to operate the University of Utah TRIGA Reactor (UUTR) at a maximum steady-state thermal power of 100 kilowatts (kW) thermal power. The renewed license would authorize the applicant to operate the UUTR up to a steady-state thermal power of 100 kW for an additional 20 years from the date of issuance.

By letter dated March 25, 2005, as supplemented on June 1, 2009, February 9, 2010, March 10, 2010, May 13, 2010, May 27, 2010, October 4, 2010 (two letters), and June 8, 2011, the NRC received an application from the licensee filed pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.51(a), to renew Facility Operating License No. R–126 for the UUTR.

The application contains sensitive unclassified non-safeguards information. Based on its initial review of the application and the supplemental information, the Commission's staff determined that UUTR submitted sufficient information in accordance with 10 CFR 50.33 and 10 CFR 50.34 so that the application is acceptable for docketing. The current Docket No. 50–407 for Facility Operating License No. R–126 will be retained. The docketing of the renewal application does not preclude requests for additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

II. Opportunity To Request a Hearing or Petition for Leave To Intervene

Within 60 days of this notice, any person(s) whose interest may be affected may file a request for hearing/petition to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board (the Licensing Board) that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by September 19, 2011. The petition must be filed in accordance with the filing instructions in section III of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in

a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by September 19, 2011.

III. Electronic Submissions (E-Filing)

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 ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, 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 (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from July 21, 2011. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in the documents NUREG–1537, entitled ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors'' and the ''Interim Staff Guidance on the Streamlined Review Process for License Renewal for Research Reactors'' (ISG) which can be obtained from the Commission's public document room (PDR). The detailed review guidance (NUREG–1537 and the ISG) are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML042430055 for part one of NUREG–1537, ADAMS Accession No. ML042430048 for part two of NUREG–1537 and ADAMS Accession No. ML092240244 for the ISG. Copies of the application to renew the facility license from the licensee are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738. The initial application, cover letter only, dated March 25, 2005, and supplemented in its entirety by updated safety analysis reports, provided in letters dated June 1, 2009, October 4, 2010, and June 8, 2011, and other related documents dated February 9, 2010, March 10, 2010, May 13, 2010, and May 27, 2010, may be accessed through the NRC Library at the address previously provided, under ADAMS Accession Nos.: March 25, 2005, (ML050900074); June 1, 2009, (ML092090027); February 9, 2010, (ML100550670); March 10, 2010, (ML100810143); May 13, 2010 (ML101380222); May 27, 2010, (ML101600188); October 4, 2010, two letters 59(ML103160196, and ML103210041); and June 8, 2011 (ML111720666).

Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. *Filing of Contentions.* Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. *Review of Denials of Access.*

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. *Review of Grants of Access.* A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland this 15th day of July, 2011.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2011–18386 Filed 7–20–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: Thursday, August 4, 2011, at 10 a.m.; and Friday, August 5, at 8:30 a.m. and 10:30 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: Thursday, August 4 at 10 a.m.—Closed; Friday, August 5, at 8:30 a.m.—Open; and at 10:30 a.m.—Closed

MATTERS TO BE CONSIDERED:

Thursday, August 4 at 10 a.m. (Closed)

1. Strategic Issues.
2. Financial Matters.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Friday, August 5 at 8:30 a.m. (Open)

1. Approval of Minutes of Previous Meetings.
2. Remarks of the Chairman of the Board.
3. Remarks of the Postmaster General and CEO.
4. Committee Reports.
5. Quarterly Report on Service Performance.
6. Quarterly Report on Financial Performance
7. Tentative Agenda for the September 12–13, 2011, meeting in Washington, D.C.

Friday, August 5 at 10:30 a.m. (Closed—If Needed)

1. Continuation of Thursday's closed session agenda.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2011–18640 Filed 7–19–11; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64891; File No. SR–Phlx–2011–98]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Correct a Typographical Error in Rule 1020

July 14, 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 July 6, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Exchange Rule 1020 (Registration and Function of Options Specialists) to correct a typographical error.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to correct a typographical error in subsection (a)(v)(B) of Rule 1020. On June 1, 2011, the Exchange filed an immediately effective proposal regarding Remote Specialists (the ''Remote Specialist filing'') that expanded the Remote Specialist concept.[3] By the Remote Specialist filing, the Exchange enhanced the existing Remote Specialist[4] model so that all eligible ROTs[5] on the Exchange could function as Remote Specialists; and eliminated the requirement that an option may only be allocated to an RSQT[6] acting as a Remote Specialist if an option cannot be allocated to (or retained by) an on-floor specialist. The Exchange confirmed that all of the key principles would remain applicable to Remote Specialists: (a) Remote Specialists would be subject to all of the obligations and privileges of floor-based specialists unless otherwise noted in Exchange rules; (b) Remote Specialists and on-floor specialists would have equivalent quoting requirements; and (c) RSQTs approved to act as Remote Specialists would have heightened quoting obligations when acting as Remote Specialists in contrast to when acting as RSQTs. The Exchange also established in subsection (a)(v) of Rule 1020 that Remote Specialists may have a representative known as a ''Designee'' on the trading floor of the Exchange during trading hours that may represent the specialist in open outcry trades in a trading crowd.

There is a typographical error in new subsection (a)(v)(B) of Rule 1020 as established in the Remote Specialist filing whereby a Registered Options Trader is inadvertently referred to as a ''registered Remote Options Trader.'' The Exchange is hereby correcting the error by deleting the word ''Remote'' so that the reference in subsection (a)(v)(B) would be to Registered Options Trader. The Exchange notes that the proposed change is wholly in conformity with the types of traders (market makers) on the Exchange. That is, unlike Registered Options Traders, which are defined in Exchange Rules and the Remote Specialist filing, there is no defined category of traders on the Exchange known as registered Remote Options Traders. Moreover, the term Registered Options Trader is used elsewhere in Rule 1020 as well as throughout Exchange rules, whereas the term registered Remote Options Trader is used only once in error.

The Exchange believes that it is clear from the context of Rule 1020, Exchange Rules in general, and the Remote Specialist filing that the Exchange intended to refer to Registered Options Trader in Rule 1020. The Exchange therefore now corrects the noted typographical error by referring in

[3] *See* Securities Exchange Act Release No. 64591 (June 2, 2011), 76 FR 33383 (June 8, 2011) (SR–Phlx–2011–79) (notice of filing and immediate effectiveness). The rule text proposed in this filing reflects language changes made in SR–Phlx–2011–79, which became operative on or about July 2, 2011.

[4] A Remote Specialist is an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501. A Remote Specialist has all the rights and obligations of an options specialist, unless Exchange rules provide otherwise. *See* Rule 1020.

[5] An ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Rule 1014(b)(i).

[6] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Rule 1014(b)(ii)(B).

subsection (a)(v)(B) of Rule 1020 to Registered Options Trader.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system by correcting an inadvertent error in subsection (a)(v)(B) of Rule 1020 regarding the term Registered Options Trader.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(3) thereunder,[10] Phlx has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, the Exchange believes that this proposal is immediately effective and operative upon filing.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(3).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–98 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–98. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–98 and should be submitted on or before August 11, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–18341 Filed 7–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64889; File No. SR–BATS–2011–018]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Adopt Rules for the Qualification, Listing and Delisting of Companies on the Exchange

July 14, 2011.

I. Introduction

On May 12, 2011, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 adopt rules for the qualification, listing and delisting of companies on the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 1, 2011.[3] The Commission received no comment letters regarding the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is July 16, 2011.

The Commission is hereby extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64546 (May 25, 2011), 76 FR 31660 (June 1, 2011) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

rule change. In particular, the extension of time will ensure that the Commission has sufficient time to consider and take action on the Exchange's proposal, which will be part of a comprehensive set of proposals, including, but not limited to, the establishment of new trading rules and a BATS official closing price for securities primarily listed on BATS.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act [5] and for the reasons stated above, the Commission designates August 30, 2011, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change File No. SR–BATS–2011–018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–18340 Filed 7–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64896; File No. SR–BX–2011–045]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Requesting Permanent Approval of Pilot Program To Permit BOX To Accept Inbound Routes by NOS

July 15, 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 July 13, 2011, NASDAQ OMX BX, Inc. (''BX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to request permanent approval of the Exchange's pilot program to permit the Boston Options Exchange (''BOX'') to accept inbound routes by NASDAQ Options Services, LLC (''NOS'') of Nasdaq Options Market (''NOM'') Exchange Direct Orders without checking the NOM book and 2) NOM non-System securities, including Exchange Direct Orders.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NOS is the approved outbound routing facility of the NASDAQ Stock Market (the ''NASDAQ Exchange'') for NOM, providing outbound routing from NOM to other market centers.[4] The Exchange and the NASDAQ Exchange have previously adopted rules to permit BOX to receive inbound routes of certain option orders, specifically (1) Exchange Direct Orders without checking the NOM book prior to routing, and (2) NOM non-system securities, by NOS on a pilot basis.[5] The Exchange specifically has adopted a rule to prevent potential information advantages resulting from the affiliation between BOX and NOS, as related to NOS's authority to route orders from NOM to BOX.[6] NOS's authority to route these orders to BOX is subject to a pilot period ending on August 16, 2011.[7] The Exchange hereby seeks permanent approval to permit BOX to accept inbound routes of (1) Exchange Direct Orders without checking the NOM book and (2) NOM non-System securities, including Exchange Direct Orders that NOS routes from NOM.

Pursuant to prior rule filings with the Commission, BOX and NOS inbound routing relationship with respect to certain orders has operated on a pilot basis. In connection with this pilot program, BX committed to the following:

1. The Exchange and FINRA would enter into a regulatory services agreement (''Regulatory Contract'') pursuant to which FINRA has been allocated regulatory responsibilities to review NOS's compliance with BOX's rules through FINRA's examination program.[8] The Exchange, however, retained ultimate responsibility for enforcing its rules with respect to NOS except to the extent that they are covered by an agreement with FINRA pursuant to Rule 17d–2 [9] under the Act (''17d–2 Agreement''), in which case the regulatory responsibility is allocated to FINRA as provided in Rule 17d–2(d).

2. The Exchange and FINRA would monitor NOS for compliance with the

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to Chapter VI, Section 1(b) of the NOM rules, ''System Securities'' are all options that are currently trading on NOM pursuant to Chapter IV of the NOM rules. All other options are ''Non-System Securities.'' [sic] Chapter VI, Section (1)(e)(7) of the NOM Rules, Exchange Direct Orders are orders that route directly to other Options Markets on an immediate-or-cancel basis without checking the NOM book for liquidity.

[4] NOM Rule Chapter VI, Section 11(c). Under NOM Rule Chapter VI, Section 11(c): (1) NOM routes orders in options via NOS, which serves as the sole ''routing facility'' of NOM; (2) the sole function of the routing facility is to route orders in options to away markets pursuant to NOM rules, solely on behalf of NOM; (3) NOS is a member of an unaffiliated self-regulatory organization, which is the designated examining authority for the broker-dealer; (4) the routing facility is subject to regulation as a facility of the NASDAQ Exchange, including the requirement to file proposed rule changes under Section 19 of the Act; (5) use of NOS to route order to other market centers is optional; (6) NOM must establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Exchange and its facilities (including the routing facility), and any other entity; and (7) the books, records, premises, officers, directors, agents, and employees of the routing facility, as a facility of the NASDAQ Exchange, shall be subject at all times to inspection and copying by the NASDAQ Exchange and the Commission.

[5] *See* Securities Exchange Act Release Nos. 60349 (July 20, 2009), 74 FR 37071 (July 27, 2009) (SR–BX–2009–035); 60354 (July 21, 2009), 74 FR 37074 (July 27, 2009) (SR–NASDAQ–2009–065); 62555 (July 22, 2010), 75 FR 44835 (July 29, 2010) (SR–BX–2010–051); 63364 (November 23, 2010), 75 FR 74121 (November 30, 2010) (SR–BX–2010–078); 64530 (May 20, 2011), 76 FR 30746 (May 26, 2011) (SR–BX–2011–027).

[6] *See* Chapter XXXIX, Section 2(c) of the Grandfathered Rules of the Exchange.

[7] *See* Securities Exchange Act Release No. 64530 (May 20, 2011), 76 FR 30746 (May 26, 2011) (SR–BX–2011–027).

[8] The Exchange also states that NOS is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements. *See* Securities Exchange Act Release No. 60349 (July 20, 2009), 74 FR 37071 (July 27, 2009) (SR–BX–2009–035).

[9] 17 CFR 240.17d–2.

BOX's trading rules, and collect and maintain certain related information; [10]

3. FINRA has agreed to provide a report to the BOXR's Chief Regulatory Officer, on at least a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange and FINRA become aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules and (ii) quantifies the number of investigations that identify NOS as a participant that has potentially violated Commission or Exchange rules; [11]

4. BX adopted Chapter XXXIX, Section 2(c) of the Grandfathered Rules of the Exchange, which requires NASDAQ OMX, as the holding company owning NOS and affiliated with BOX through the ownership of the Exchange, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system on the basis of non-public information regarding planned changes to BOX's systems, obtained as a result of its affiliation with BOX, until such information is available generally to similarly situated BOX participants, in connection with the provision of inbound order routing to BOX; [12] and

5. The Exchange proposed that NOS be authorized to route Exchange Direct Orders without checking the NOM book; and orders in NOM non-system securities inbound to the Exchange from NOM for a pilot period of twelve months, as further extended to August 16, 2011.[13]

The Exchange has met all the above-listed conditions. By meeting the above-conditions, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NOS, as well as demonstrate that NOS cannot use any information advantage it may have because of its affiliation with the Exchange and BOX. Since the Exchange has met all the above-listed conditions, it now seeks permanent approval of the BOX and NOS inbound routing relationship. The Exchange will continue to comply with the conditions 1–4 stated above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(5) of the Act,[15] 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. Specifically, the proposed rule change would permit inbound routing of orders from NOM to BOX through NOS in a manner consistent with prior approvals and established protections. The Exchange believes that having met the commitments established during the pilot program demonstrates that the Exchange has mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NOS, as well as demonstrate that NOS cannot use any information advantage it may have because of its affiliation with the Exchange and BOX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–045 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–BX–2011–045. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

All submissions should refer to File Number SR–BX–2011–045 and should be submitted on or before August 11, 2011.

[10] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in routing orders to BOX) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations.

[11] *Id.*

[12] *See* Chapter XXXIX, Section 2(c) of the Grandfathered Rules of the Exchange.

[13] *See* supra note 7.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18345 Filed 7–20–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7531]

30-Day Notice of Proposed Information Collection: Form DS–4155, Vendor Application for OFM Web Site Account; & Form DS–7576, Foreign Mission Emergency Afterhours Contact for Foreign Diplomatic Services Applications

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Vendor Application for OFM Website Account.
- *OMB Control Number:* 1405–0105.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).
- *Form Numbers:* DS–4155.
- *Respondents:* Foreign government representatives assigned to the U.S. and bonded warehouse vendors.
- *Estimated Number of Respondents:* 1,005 missions.
- *Estimated Number of Responses:* 3,015 responses.
- *Average Hours per Response:* 20 minutes.
- *Total Estimated Burden:* 1,005 hours divided among the missions.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain or retain a benefit.
- *Title of Information Collection:* Foreign Mission Emergency Afterhours Contact.
- *OMB Control Number:* 1405–0105.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).
- *Form Number:* DS–7675.
- *Respondents:* Foreign government representatives assigned to the United Sates.
- *Estimated Number of Respondents:* 737 missions.
- *Estimated Number of Responses:* 737 forms per year.
- *Average Hours per Response:* 15 minutes.
- *Total Estimated Burden:* 184 hours divided among the missions.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to obtain or retain a benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from date of publication in the **Federal Register**.

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 from Jacqueline Robinson, Diplomatic Security, Office of Foreign Missions, 2201 C Street, NW., Room 2236, Washington, DC 20520, who may be reached on (202) 647–3416.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond,

Abstract of Proposed Collection

Foreign Diplomatic Service Application Forms DS–4155 and DS–7675 are associated with OMB Collection number 1405–0105. Form DS–4155 (Vendor Application for OFM Website Account) is the means by which the Department of State (DOS) will provide authorized vendor access to the Office of Foreign Missions' electronic data submission (e-Gov) Bonded Warehouse program. This application will be used to determine eligibility and create a user account permitting bonded warehouse personnel, on behalf of foreign missions authorizing the request, to submit electronic bonded warehouse purchases (form DS–1504) for OFM clearance. OFM's e-Gov system is accessed to submit automated service requests to the Office of Foreign Missions and the Office of Protocol of the U.S. State Department to obtain ''benefits'' designated under the Vienna Convention on Diplomatic Relations (1961) (VCDR), the Vienna Convention on Consular Relations (1963) (VCCR), and the Foreign Missions Act, 22 U.S.C. 4301 *et seq.,* that must be obtained through the U.S. Department of State. Form DS–7675 is the means by which the DOS will maintain current emergency contact information on senior level officials assigned to foreign missions in the diplomatic and consular communities in the United States. The application requests the primary and deputy senior level points of contact information for both work and after work hours to use to communicate essential information in an emergency, crisis, or disaster situation. The applications provide the Department with the necessary information to administer its programs effectively and efficiently, as well as prepare for an emergency event.

Methodology: These applications/information collections are submitted by all foreign missions to the Office of Foreign Missions via the following methods: electronically, mail, or personal delivery.

Dated: July 7, 2011.

Bruce Matthews,

Managing Director, Bureau of Diplomatic Security, Office of Foreign Missions, U.S. Department of State.

[FR Doc. 2011–18433 Filed 7–20–11; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Delegation of Authority No. 338]

Delegation of the Functions and Authorities of the Under Secretary for Public Diplomacy and Public Affairs to the Assistant Secretary for Educational and Cultural Affairs

By virtue of the authority vested in the Secretary of State by the laws of the United States, including the Mutual Educational and Cultural Exchange Act of 1961, as amended (Fulbright-Hays Act), the United States Information and Educational Exchange Act of 1948, as amended, and the State Department Basic Authorities Act of 1956, as amended, and delegated to me by Delegation of Authority 245–1, dated

[16] 17 CFR 200.30–3(a)(12).

February 13, 2009, I hereby delegate to the Assistant Secretary of State for Educational and Cultural Affairs, to the extent authorized by law, all authorities vested in the Under Secretary of State for Public Diplomacy and Public Affairs, including all authorities vested in the Secretary of State that have been or may be delegated or re-delegated to that Under Secretary.

Any authorities covered by this delegation may also be exercised by the Secretary of State, the Deputy Secretary, and the Deputy Secretary for Management and Resources. Nothing in this delegation of authority shall be deemed to supersede or revoke any existing delegation of authority, which shall remain in full force and effect during and after this delegation.

Any act or other authority related to this delegation of authority shall be deemed to be such act or other authority as amended from time to time.

This delegation of authority shall expire upon the appointment and entry upon duty of a subsequently-appointed individual to serve as Under Secretary of State for Public Diplomacy and Public Affairs.

This delegation of authority shall be published in the **Federal Register**.

Dated July 7, 2011.

Thomas R. Nides,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2011–18449 Filed 7–20–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0127]

Pipeline Safety: Meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Announcement of Meeting Location and Date Change.

SUMMARY: In a **Federal Register** notice published on May 20, 2011, (76 FR 29333) PHMSA announced that the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) would meet on August 2–3, 2011, from 9 a.m. to 5 p.m. The meeting dates have been changed. The TPSSC and the THLPSSC will now meet on August 2, 2011, only, from 9 a.m. to 5 p.m. The meeting will be held at The Weston Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203.

Please refer to the May 20, 2011, (76 FR 29333) notice for more details about the meeting. The TPSSC and THLPSSC will consider a draft pipeline safety report to the nation. The meeting will be open to the public.

Authority: 49 U.S.C. 60102, 60115; 60118.

Issued in Washington, DC, on July 14, 2011.

Alan K. Mayberry,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2011–18319 Filed 7–20–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1053 (Sub-No. 2X)]

Michigan Air-Line Railway Co.—Abandonment Exemption—in Oakland County, MI

On July 1, 2011, Michigan Air-Line Railway Co. (MAL Railway) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an approximately 5.45-mile rail line between milepost 45.26 (Engineer's Profile Station 2389+72), at the west line of Haggerty Road, and milepost 50.65 (Engineer's Profile Station 2677+67), at the intersection with the right-of-way of a CSX Transportation, Inc. rail line, in the City of Wixom, in Oakland County, Mich.[1] The line traverses U.S. Postal Service Zip Codes 48390 and 48393.

The line does not contain Federally granted rights-of-way. Any documentation in MAL Railway's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 19, 2011.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 10, 2011. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 1053 (Sub-No. 2X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) W. Robert Alderson, 2101 SW., 21st Street Topeka, KS 66604. Replies to MAL Railway's petition are due on or before August 10, 2011.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at: ''*HTTP://WWW.STB.DOT.GOV*.''

Decided: July 18, 2011.

[1] In a decision served on May 18, 2011, the Board denied a previous petition submitted by MAL Railway to abandon the line at issue. The Board denied the petition because MAL Railway did not provide the Board with sufficient evidence regarding the revenues and costs associated with the line, thereby making it impossible to determine what burden, if any, MAL Railway incurred in continuing to operate the line. *Mich. Air-Line Ry.—Abandonment Exemption—in Oakland Cnty., Mich.,* AB 1053 (Sub-No. 1X) (STB served May 18, 2011).

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–18404 Filed 7–20–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 18, 2011.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before August 22, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1626.

Type of Review: Extension without change of a currently approved collection.

Title: U.S. Return of Income for Electing Large Partnerships (Form 1065-B), Partner's Share of Income (Loss) From an Electing Large Partnership (Schedule K–1).

Forms: 1065–B and related schedules.

Abstract: Code sections 771–777 allow large partnerships to elect to file a simplified return which requires fewer items to be reported to partners.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 487,225.

OMB Number: 1545–2200.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8944, Preparer Hardship Waiver Request; Form 8948, Preparer Explanation for Not Filing Electronically.

Forms: 8944 and 8948.

Abstract: Specified tax return preparers use Form 8944 to request an undue hardship waiver from the section 6011(e)(3) requirement to electronically file returns of income tax imposed by subtitle A on individuals, estates, or trusts. A specified tax return preparer may be required by law to e-file certain covered returns that can be filed electronically. There are exceptions to this requirement. Form 8948 is used to explain which exception applies when a covered return is prepared and filed on paper.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 18,270,900.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–18378 Filed 7–20–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 76 Thursday,

No. 140 July 21, 2011

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act (MSA) Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP); Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110329229–1370–03]

RIN 0648–BA71

Magnuson-Stevens Fishery Conservation and Management Act (MSA) Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP)

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

ACTION: Final rule.

SUMMARY: NMFS hereby implements measures approved in Amendment 15 to the Scallop FMP (Amendment 15), which was developed by the New England Fishery Management Council (Council). Amendment 15 was developed primarily to implement annual catch limits (ACLs) and accountability measures (AMs) to bring the Scallop FMP into compliance with requirements of the MSA as reauthorized in 2007. Amendment 15 includes additional measures recommended by the Council, including: A revision of the overfishing definition (OFD); modification of the essential fish habitat (EFH) closed areas under the Scallop FMP; adjustments to measures for the Limited Access General Category (LAGC) individual fishing quota (IFQ) fishery; adjustments to the scallop research set-aside (RSA) program; and additions to the list of measures that can be adjusted by framework adjustments. NMFS has disapproved a provision that would have allocated additional scallop catch to the LAGC fleet because it was not consistent with National Standard 1 and the ACL requirement of the MSA.

DATES: Effective July 21, 2011.

ADDRESSES: A final environmental impact statement (FEIS) was prepared for Amendment 15 that describes the proposed action and its alternatives and provides a thorough analysis of the impacts of proposed measures and their alternatives. Copies of Amendment 15, including the FEIS and the IRFA, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, phone (978) 281–9288, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In January 2007, the MSA was reauthorized and included a provision requiring each FMP to use ACLs to prevent overfishing, including measures to ensure accountability, should the ACLs be exceeded. For fishery resources that were determined to be subject to overfishing, the MSA requires that such measures be implemented by 2010. For fishery resources that are not subject to overfishing, such measures must be implemented by 2011. Scallop fishery management measures to comply with the MSA's ACL and AM requirements are required for 2011, because the scallop resource is not subject to overfishing. To meet this requirement, the Council initiated development of Amendment 15 on March 5, 2008, by publishing a Notice of Intent to develop Amendment 15 (73 FR 11888, March 5, 2008) and prepare an EIS to analyze the impacts of the proposed management alternatives. The Council intended that Amendment 15 would address three goals: (1) Bring the Scallop FMP into compliance with new requirements of the reauthorized MSA; (2) address excess capacity in the limited access (LA) scallop fishery; and (3) consider measures to adjust several aspects of the overall program to make the scallop FMP more effective. Following the public comment period that ended on August 23, 2010, the Council adopted Amendment 15 on September 29, 2010. The Council voted to adopt most of the measures proposed in the amendment except permit stacking and leasing alternatives, which had been designed to address excess capacity, after considering extensive written and oral public comment on the measures. Ultimately the Council rejected these measures due to concerns that the measures would have unacceptable negative economic and social impacts on the scallop fleet and fishing communities. The Notice of Availability (NOA) for Amendment 15 was published March 24, 2011 (76 FR 16595), with a comment period ending May 23, 2011. The proposed rule for Amendment 15 was published April 11, 2011 (76 FR 19929), with a comment period ending May 26, 2011.

This final rule implementing Amendment 15 establishes the mechanism for implementing ACLs and AMs, which in turn will generate scallop fishery specifications, including days-at-sea (DAS), access area trip allocations, and individual fishing quotas (IFQs). Amendment 15 does not include ACLs and fishery specifications. These specifications will be established through the separate action of Framework 22 to the FMP for fishing years (FYs) 2011, 2012, and 2013. Framework 22 includes specific measures that address the change from DAS, access areas, and trip allocations that became effective on March 1, 2011, to different allocations implemented under Framework 22. If Framework 22 is approved, a final rule implementing Framework 22 measures will be published shortly after publication of this final rule.

The Council reviewed the Amendment 15 proposed regulations as drafted by NMFS and deemed them to be necessary and appropriate as required by section 303(c) of the MSA.

Disapproved Measure

NMFS has disapproved the proposed measure that would have allocated additional catch to the LAGC IFQ fleet if the limited access fleet's AM exception were implemented. The Council adopted, and NMFS has approved, a LA fleet AM exception that could exempt the LA fleet from its AM, even if the LA fleet exceeds its sub-ACL in a given FY. The exception will be implemented if the actual F for the total ACL is lower than the estimated F for the scallop fishery's ACL for that year, based on an evaluation by the Council's Scallop Plan Development Team (PDT) after the end of the fishing year. Estimated F could be higher than actual F if landings per unit effort (LPUE) had been underestimated relative to the status of the resource, so that the estimated F, and consequently the specified ACL, was inconsistent with actual resource conditions.

The Council also adopted a related measure that would have allocated additional catch to the LAGC IFQ fleet if the LA fleet's AM exception was enacted after the LA sub-ACL was exceeded, in a manner proportional to the LA fleet's overage. The Council's rationale was that, if the LA fleet did not have to have its AM triggered, the LAGC IFQ fleet should benefit in some way too (*i.e.,* the LAGC IFQ fleet should also

benefit from an underestimate of ABC/ACL based on the re-evaluation of F). Also, the Council was concerned that an inequity could occur because the LA fleet would have harvested more scallops than it was allocated, without being held accountable. Had the original F estimate been accurate, the ''extra'' scallops could have been distributed to both the LA and LAGC IFQ fleets in setting the allocations. To account for the inequity, the LAGC IFQ fleet would be allocated 5.5 percent of the LA fleet's overage of its sub-ACL. The additional allocation to the LAGC IFQ fleet would be distributed through adjustment of IFQs in the FY following the evaluation.

Under the LA fleet AM exception measure, the LA fleet could have exceeded its prescribed ACL, and could have unaccounted catch, but there would be a process for evaluating the overage relative to the F related to the total ACL (which is equal to the acceptable biological catch (ABC)). However, the proposed measure that would have allocated additional catch to the LAGC IFQ fleet if the AM exception is triggered would not have evaluated the reallocation relative to ABC, ACL, sub-ACLs, or the associated Fs, and therefore could have risked exceeding the ABC/ACL. Because the proposed AM exception would have been automatic, additional catch would have been allocated in the following FY without consideration of whether the additional catch would cause the overall ACL, or F associated with that ACL, to be exceeded when combined with total catch in that year. This is contrary to the Council's intent to build precaution into establishing ACLs and sub-ACLs in the fishery. As a result, this measure would risk overfishing. Because there is no assurance that allocating additional catch to the LAGC IFQ fleet would prevent overfishing, the measure is inconsistent with National Standard 1 of the MSA. The measure is also inconsistent with the MSA requirement at Section 303(a)(15) that FMPs ''establish a mechanism for specifying ACLs in the plan * * * at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.''

In addition, this substantive measure was added to Amendment 15 at the last Council meeting before adoption of Amendment 15 and, as such, is inconsistent with MSA and National Environmental Policy Act procedures because the process did not provide sufficient opportunity for full open public and Council consideration of the impacts of the measure and its implications on ACL management of the scallop fishery. NMFS has therefore disapproved the proposed measure.

Approved Management Measures

1. ACL Flow Chart

Amendment 15 establishes a method for accounting for all catch in the scallop fishery and includes designations of Overfishing Limit (OFL), ABC, ACLs, and Annual Catch Targets (ACT) for the scallop fishery, as well as scallop catch for the Northern Gulf of Maine (NGOM), incidental, and state waters catch components of the scallop fishery. The scallop fishery assessment will determine the exploitable biomass, including an assessment of discard and incidental mortality (mortality of scallops resulting from interaction, but not capture, in the scallop fishery). Based on the assessment, OFL is specified as the level of landings, and associated F that, above which, overfishing is occurring. OFL will account for landings of scallops in state waters by vessels without Federal scallop permits. The current assessment of the scallop fishery (SAW 50, 2010) determined that the F associated with the OFL is 0.38. Since discard and incidental mortality are accounted for in the scallop resource assessment and removed prior to setting ABC, the specification of ABC, ACL, and ACT; as well as the NGOM and incidental catch; are represented by landings as a proxy for catch. ACL will be equal to ABC, but to account for scientific uncertainty, ABC will be less than OFL, with an associated F that has a 25-percent probability of exceeding F associated with OFL (*i.e.,* a 75-percent probability of being below the F associated with OFL). SAW 50 determined that the F associated with the ABC/ACL is 0.32. Catch from the NGOM is established at the ABC/ACL level, but will not be subtracted from ABC/ACL. Since the NGOM portion of the scallop fishery is not part of the scallop assessment, the catch will be added and specified as a separate Total Allowable Catch (TAC), in addition to ABC/ACL. After removing observer and RSA (1 percent of the ABC/ACL and 1.25 M lb (567 mt) (proposed in Amendment 15), respectively), Amendment 15 establishes separate sub-ACLs for the LA and LAGC fisheries. To account for management uncertainty, Amendment 15 establishes ACTs for each fleet. For the LA fleet, the ACT will have an associated F that has a 25-percent chance of exceeding ABC. The F associated with this ACT is currently estimated to be 0.28. For the LAGC fleet, the ACT will be set equal to the LAGC fleet's sub-ACL.

2. Modification of the OFD

Amendment 15 modifies the current OFD to provide for better management of the scallop fishery under area rotation. The Hybrid OFD combines the overfishing threshold from the status quo OFD for open areas with a time-averaged F approach for access areas. The F target in the open areas will be set at a level that is no higher than the overfishing threshold (currently F = 0.38). In access areas, it will be set annually at a level that results in F no higher than F_{MSY} when averaged over time with the F in that access area, including times when the access area was closed. The combined target F for all areas can be no higher than that which gives a 25-percent probability of exceeding the F associated with ABC (F = 0.32), which is currently calculated to be F = 0.28, taking into account all sources of F in the scallop fishery.

The OFD and overfishing reference points that are replaced by the approved measures in Amendment 15 were based on the assumption that F is spatially uniform. In the scallop fishery this assumption was inaccurate, because of unfished biomass in closed areas, variable Fs in access areas, and spatially variable F in open areas. Under the replaced OFD, closed and access areas protected the scallop stock from recruitment overfishing, but growth overfishing could have occurred in the open areas because the OFD averaged spatially across open and closed areas (*i.e.,* F is higher in open areas to compensate for the zero F in closed areas). The greater the fraction of scallops in the closed areas, the more ineffective the replaced OFD would become. Additionally, when more biomass is within closed areas, the estimated whole-stock F may be more sensitive to recruitment and measurement error than to changes in effort. Therefore, while the replaced OFD was consistent with MSA requirements, and was effective at keeping the scallop fishery above the overfished level and preventing overfishing overall, certain resource and fishery conditions as described above reduced the effectiveness of the FMP. The approved OFD in Amendment 15 better reflects conditions of the fishery.

3. OFD Reference Points

The previous OFD stated that F_{MAX} will be used as a proxy for F_{MSY}. However, SAW 50 approved a direct estimate of F_{MSY}. Therefore, Amendment 15 replaces the previous B_{MAX} and F_{MAX} with B_{MSY} and F_{MSY}. Final results from SAW 50 were available in August 2010, and both the

Scallop Committee and the Council's Scientific and Statistical Committee (SSC) reviewed the results and agreed that the OFD should be updated to reflect new biological reference points based on B_{MSY} and F_{MSY}. Under Amendment 15, the new OFD shall read:

> If stock biomass is equal or greater than B_{MSY} as measured by an absolute value of scallop meat (mt) (estimated in 2009 at 125,358 mt scallop meat in the Georges Bank (GB) and Mid-Atlantic resource areas), overfishing occurs when F exceeds F_{MSY}, currently estimated as 0.38. If the total stock biomass is below B_{MSY}, overfishing occurs when F exceeds the level that has a 50-percent probability to rebuild stock biomass to B_{MSY} in 10 years. The scallop stock is in an overfished condition when stock biomass is below ½ B_{MSY}, and in that case overfishing occurs when F is above a level expected to rebuild in 5 years, or above zero when the stock is below ¼ B_{MSY}.

The changes to the OFD also require revisions of the current framework provisions in the scallop fishery regulations at § 648.55. Under the previous OFD, the framework adjustment process included provisions that ensure that measures achieve optimum yield (OY) on a continuing basis. These provisions were established as part of Amendment 10 to the FMP because of the potential inconsistency between rotational area management and use of a spatially-average OFD, whereby open area F may be elevated relative to the condition of the resource in open areas, thus preventing OY from being achieved. Because the approved OFD drastically reduces the risk of inappropriate open area fishing levels, due to application of the threshold F to drive open area fishing levels, the framework provisions specifically designed to adjust Council recommendations to ensure that OY is achieved are no longer necessary.

4. Scientific Uncertainty and ABC Control Rule

Amendment 15 includes two different assessments of scientific uncertainty, based on the following scientific parameters that are utilized in scallop resource and fishery assessments:

- Growth;
- Maturity and fecundity;
- Shell height/meat weight relationship;
- Natural mortality;
- Catch data;
- Discards and discard mortality;
- Incidental mortality;
- Commercial shell height data;
- Commercial and survey gear selectivity;
- Commercial and survey dredge efficiency;
- Stock-recruitment relationship; and
- Density dependence.

The first assessment of scientific uncertainty is qualitative and is based on the level of uncertainty, importance, and effect of the parameters. Uncertainty, importance, and effect of the parameters on the scallop resource and fishery assessment are characterized numerically on a scale of low to high. This first assessment of scientific uncertainty provides managers with an indication of the overall level of scientific uncertainty, which would help determine a buffer between the OFL and ABC. The Council concluded in Amendment 15 that scientific uncertainty in the scallop resource and fishery is low.

The second assessment of scientific uncertainty enables the Council to establish ABC that has a low risk of exceeding OFL. Based on the parameters for determining scientific uncertainty, an analytical model developed by the Council's Scallop PDT specifies the probability of exceeding the OFL at a specified F associated with the corresponding catch level. Using this model, and given the overall low level of scientific uncertainty, the ABC control rule sets ABC at a level that has a 25-percent probability of exceeding OFL (*i.e.,* a 75-percent probability that it will not exceed OFL). This value can be modified through the framework adjustment process.

5. State Waters Catch, NGOM TAC, and Incidental Catch

Scallop catch from state waters by vessels not issued a Federal scallop permit is a relatively small component of overall scallop catch, and the scallop resource in state waters is not part of the Federal scallop resource survey. To account for scallop landings from state waters, the Councils Scallop PDT will estimate landings annually, based on available state waters landings information, and include it in the specification of OFL. The amount of scallop landings in state waters will then be specified as a separate level of landings that will be compared to actual landings each year, and adjusted as necessary in subsequent years. This component of overall catch is not specified as an ACL and has no associated AM, since there is no Federal authority to adjust catch by vessels without a Federal permit.

Scallop catch in the NGOM will be specified similar to state waters scallop catch, except that the NGOM landings level will be based on historical landings or available resource surveys in the NGOM, and will be included in the specification of ABC. While there is no Federal survey in the NGOM, independent surveys have been conducted and, if continued, would provide survey information for NGOM landings specifications each year. Although this component of overall scallop catch is not formally an ACL, an overage will be accounted for in the subsequent FY through a reduction of the landings limit that is equal to the overage from the prior FY.

Incidental catch has been estimated to be 50,000 lb (24,948 kg), and data continue to support this value, based on historical and predicted landing levels. Incidental catch will be removed from ABC prior to establishing the research and observer set-asides and ACLs for the LA and LACG IFQ fleets. This component of overall scallop catch does not have a specific AM, but if incidental catch is higher than predicted, the landings limit will be adjusted in the subsequent FY(s) by removing more incidental catch from ABC.

6. Separate ACLs for the LA and LAGC IFQ Fleets as Sub-ACLs

The LA and LAGC IFQ fleets will be allocated landings as sub-ACLs of the overall scallop fishery ACL with the same allocation values that were established under Amendment 11 to the FMP: LA vessels will be allocated 94.5 percent of the ABC/ACL landings; and LAGC IFQ vessels will be allocated 5.5 percent of the ABC/ACL landings. Both allocations will be made after deducting incidental catch and research and observer set-asides from ABC. Sub-ACLs were established for these two fleets so that AMs would be based on each fleet's harvest relative to its own ACL, without requiring that one fleet would be penalized for an overage of the other. Both fleets will have carryover provisions and RSA catch can be carried over into the subsequent FY. For the purpose of accounting relative to ABC and ACL, landings from carryover DAS, IFQ, or TAC will apply to the FY in which they are landed (*i.e.,* not to the FY for which they were allocated).

7. Management Uncertainty and ACT

Amendment 15 specifies that management uncertainty in the scallop fishery mainly results from the uncertainty associated with carryover DAS, vessel upgrades and replacements, and open area catch under DAS. The uncertainty associated with these measures results from a difference between estimated vessel efficiency and LPUE, and realized efficiency and LPUE during the course of the FY. Management uncertainty for the LAGC IFQ fleet is considered very low because it would result from landings in excess

of a vessel's IFQ, which can be audited and accounted for through data reviews each year. Although ACT can be specified for the LAGC fishery, it will be set equal to the fleet's ACL initially, unless revised by the Council. An ACT for the LA fleet to account for management uncertainty will be set at a level with an associated F that has a 25-percent probability of exceeding ABC, which is currently 0.28.

8. AMs for the LA Fleet

The primary AM for the LA fleet requires a DAS reduction for the fleet in open areas that will approximate the catch overage of the ACT. Using the ACT for determining the overage is designed to account for management uncertainty and to better prevent vessels from exceeding the fleet's ACL. The DAS reduction will be distributed evenly to limited access vessels. For example, an overage of 1.5 million lb (680 mt) would have a DAS equivalent of 625 DAS, based on an LPUE of 2,400 lb (1.1 mt) per DAS. Divided across 327 full-time vessels, the DAS reduction per vessel would be 1.9 DAS. Part time vessel DAS would be reduced by 0.76 DAS (40 percent of the full time deduction) and occasional vessel DAS would be reduced by 0.16 DAS (1/12th of the full time deduction). Part-time and occasional proportional deductions are consistent with the way that DAS are assigned in the fishery. The AM will take effect in the FY following the FY in which the ACL was exceeded. Since the AM will apply mid-year, vessels may have already used more DAS in that FY than are ultimately allocated after applying the AM. If this occurs, a vessel that exceeds the DAS it is allocated after the AM is applied will have the amount of DAS used in excess of the vessel's final DAS allocation after the AM is applied deducted from its DAS allocation in the subsequent FY. For example, if a vessel initially allocated 32 DAS in FY 2011 uses all 32 DAS prior to application of the AM, and after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in FY 2012 would be reduced by 1 DAS.

9. LA Fleet AM Exception

Even if the ACL is exceeded, the F associated with the fleet's ACL may not be exceeded if, in retrospect, some of the assumptions for determining the ACL, such as LPUE relative to the status of the resource or the biomass were underestimated. Since the overall goal of the ACL is to ensure that F limits are not exceeded, enacting an AM may not be necessary if the F limits are not exceeded. To address this, Amendment 15 includes an exception provision that will stop the AM from taking effect if, in an analysis of the preceding FY before the AM goes into effect, the actual F for the scallop fishery in the prior FY was one standard deviation (currently estimated to be 0.04) below the overall F for the scallop fishery's ACL (*i.e.,* the total ACL set equal to ABC). With an F=0.32 for the ACL, one standard deviation below would be F=0.28. If the fishery's actual F is below 0.28, the AM would not be implemented. However, if the fishery's actual F is 0.28 or above, the AM would take effect. When fishery data are available after the FY ends, and before the AM takes effect, the Scallop PDT will evaluate fishery and resource information, determine the F, and recommend, through the Council, whether or not the AM should be implemented. To ensure compliance with applicable laws, the Regional Administrator has discretion to implement the exception or implement the AM in accordance with the Administrative Procedure Act (APA), after considering the Council's recommendation.

The application of the AM described in item 8 above, and the AM exception described in this item 9, will be considered at the same time to ensure that multiple adjustments of DAS do not occur in the same FY, if possible. The decision to implement the AM or the AM exception will be made by the Regional Administrator on or about September 30 of each year.

10. AM for the LAGC IFQ Fleet

If an LAGC vessel exceeds its IFQ, its IFQ will be reduced by the amount equal to the overage as soon as possible in the FY immediately following the FY in which the IFQ overage occurred. Since the AM will apply mid-year, vessels may have already used more IFQ in that FY than is ultimately allocated after applying the AM. If this occurs, a vessel that exceeds the IFQ it is allocated after the AM is applied will have the amount of IFQ landed in excess of the vessel's final IFQ allocation after the AM is applied deducted from its IFQ allocation in the subsequent FY. For example, a vessel with an initial IFQ of 1,000 lb (453.6 kg) in 2010 landed 1,200 lb (544.3 kg) of scallops in FY 2010, and is initially allocated 1,300 lb (589.7 kg) of scallops in FY 2011. That vessel would be subject to an IFQ reduction equal to 200-lb (90.7-kg) to account for the 200 lb (90.7 kg) overage in FY 2010. If that vessel lands 1,300 lb (589.7 kg) of scallops in FY 2011 prior to application of the 200 lb (90.7 kg) deduction as the AM, the vessel would be subject to a deduction of 200 lb (90.7 kg) in FY 2012.

For vessels involved in a temporary IFQ transfer, the entire deduction will apply to the vessel that acquired IFQ, not the transferring vessel. A vessel that has an overage that exceeds its IFQ in the subsequent FY will be subject to an IFQ reduction in subsequent years until the overage is paid back. For example, a vessel with an IFQ of 1,000 lb (454 kg) in each FY over a 3-year period, that harvests 2,500 lb (1,134 kg) of scallops the first year will have a 1,500-lb (680-kg) IFQ deduction, so that it would have zero pounds to harvest in year-2, and 500 lb (227 kg) to harvest in year-3. A vessel that has a ''negative'' IFQ balance, as described in the example, can lease or transfer IFQ to balance the IFQ, provided there are no sanctions or other enforcement penalties that would prohibit the vessel from acquiring IFQ.

Applying the AM to an individual vessel's IFQ was considered appropriate because individual vessel overages of IFQ will be the only cause of exceeding the ACL for the IFQ fleet. A vessel that has an overage in one FY that exceeds its entire IFQ in the subsequent FY will be required to take IFQ reductions in subsequent years until the overage is paid back. For example, a vessel with an IFQ of 1,000 lb (454 kg) in each FY over a 3-year period, that harvests 2,500 lb (1,134 kg) of scallops the first year, will have a 1,500-lb (680-kg) IFQ deduction, so that it will have zero pounds to harvest in year-2, and 500 lb (227 kg) to harvest in year-3. A vessel that has a ''negative'' IFQ balance, as described in the example, can lease IFQ to balance the IFQ, provided there are no sanctions or other enforcement actions that would prohibit the vessel from acquiring IFQ. These automatic IFQ deductions do not excuse a vessel from any enforcement actions that may be applicable for the overage. The Council determined that this individual-vessel AM would be more equitable than penalizing others in the fleet for single-vessel overages. The Council did incorporate ACT into the LAGC IFQ fleet allocation, but chose not to apply any management uncertainty buffer for the fleet at this time. This can be adjusted through the framework process if an ACT is needed to address management uncertainty.

11. Yellowtail Flounder (YTF) Sub-ACL

To account for YTF catch in the scallop fishery, Amendment 15 establishes sub-ACLs (called ''sub'' ACLs to reflect that these ACLs are part of the overall ACL established in the NE Multispecies FMP) for the Southern New England/Mid-Atlantic (SNE/MA)

and GB YTF sub-ACLs for the scallop fishery. The amount of YTF estimated to be harvested annually will depend on the scallop DAS and access area allocations, and can be adjusted through the NE Multispecies FMP framework adjustment process.

12. YTF Sub-ACL AM

Areas within the GB and SNE/MA YTF stock areas that have been pre-identified will close to scallop fishing in the FY following a FY in which the YTF sub-ACL for the scallop fishery is exceeded. These areas were identified in Amendment 15 as the statistical areas that have high bycatch of YTF in the scallop fishery. For the GB YTF stock, the closure will be in statistical area 562, which extends from just west of Closed Area II (CAII), through that closed area, and to the southeast of that closed area. In addition, a small portion of statistical area 525 within the CAII access area will also be closed. For the SNE/MA YTF stock, statistical areas 537, 539, and 613 will close under the YTF AM. Coordinates of these YTF AM closed areas are included in the proposed regulations in this proposed rule. A chart depicting the areas is in the Amendment 15 FEIS (see **ADDRESSES**). The Council decided that the statistical areas included in each YTF AM will close to LA vessels only; LAGC vessels are exempt from these closures if fishing in an exempted area authorized under the NE Multispecies FMP, because these exemptions were created because bycatch of YTF in the LAGC fishery was estimated to be low. However, any YTF catch by LAGC vessels as they continue to fish will count toward that stock area's sub-ACL for the scallop fishery (and will contribute to an overage of the sub-ACL for the scallop fishery). The YTF closure AM will be effective in the scallop FY directly following the year in which the YTF sub-ACL is exceeded. By January 15 of each year, NMFS will determine whether the YTF sub-ACL is expected to (or has been) exceeded that FY. NMFS will announce the closure to the scallop fleet as soon as possible following the determination, and the closure would take effect on March 1. The Council also specified that if the scallop fishery exceeds its YTF allocation in FY 2010 (specified under the NE Multispecies FMP), and that causes the entire applicable YT ACL to be exceeded for FY 2010, the scallop fishery will be subject to the applicable YTF AM. To implement the YTF AM for FY 2011, NMFS would have had to determine the length of the closure as specified below, beginning when Amendment 15 is effective. However, NMFS determined through analysis of FY 2010 catch and fishery data that the scallop fishery did cause the overall YTF ACL to be exceeded. The AM for 2011 is therefore not necessary. For the 2012 fishing year and beyond, the YTF closure AM areas will remain closed for the length of time specified in the following tables, and will be in place for one FY only:

SNE/MA YT Closure AM Duration for Specified Overage

Percent overage of YTF sub-ACL	Length of closure
1–2	March.
3–5	March through April.
6–8	March through May.
9–12	March through June.
13–14	March through July.
15	March through August.
16	March through September.
17	March through October.
18	March through November.
19	March through January.
20 and higher	March through February.

GB YT Closure AM Duration for Specified Overage in Years When the CAII Access Area Is Open

Percent overage of YTF sub-ACL	Length of closure
1	March through May.
2–24	March through June.
25–38	March through July.
39–57	March through August.
58–63	March through September.
64–65	March through October.
66–68	March through November.
69	March through December.
70 and higher	March through February.

GB YT Closure AM Duration for Specified Overage in Years When the CAII Access Area Is Closed

Percent overage of YTF sub-ACL	Length of closure
1	March through May.
2	March through June.
3	March through July.
4–5	March through August.
6 and higher	March through February.

13. Monitoring the YTF Sub-ACL

In order to more effectively monitor YTF bycatch in open areas, the daily vessel monitoring system (VMS) catch report that is currently required in access areas only is required for all scallop trips in all areas. Vessel operators are required to report the following information: Fishing vessel trip report (FVTR) serial number; date fish caught; total pounds of scallop meats kept; total pounds of YTF kept; total pounds of YTF discarded; and total pounds of all other fish kept. Vessels are required to submit VMS catch reports for every day fished by 9:00 a.m. of the day following the day on which fishing occurred, consistent with access area catch reporting.

14. LAGC IFQ Vessel Possession Limit Increase

IFQ scallop vessels are allowed to harvest 600 lb (272.2 kg) of shucked scallops or 75 bu (26.4 hL) of in-shell scallops per trip, an increase of 200 lb (90.7 kg) or 25 bu (8.8 hL) per trip from the previous 400-lb (181.4-kg) or 50-bu (17.6-hL) possession/trip limit. This measure addresses concerns that the previous possession limit was not economically feasible due to increased costs. The new 600-lb (272.2-kg) possession limit is not expected to change the ''small boat'' nature of the LAGC fishery, and remains consistent with the Council's vision for LAGC vessels, while enabling vessel owners to maintain profits under rising costs. The increase is also consistent with the conservation objectives of the FMP because of landings are constrained by the IFQ allocations.

15. IFQ Carryover

An IFQ vessel that has unused IFQ at the end of the FY can carry over its unused IFQ, up to 15 percent of the IFQ issued to the vessel, including transferred IFQ, for that FY into the next FY. Any IFQ that was leased, but not used, by a vessel can also be carried over by the vessel that acquired the IFQ (for monitoring and accounting purposes, leased-in IFQ is used first, in the order acquired). For accounting purposes, the combined total of all vessels' IFQ carryover will be added to the LAGC IFQ fleet's applicable ACL for the FY in which the carryover IFQ is allocated. Any IFQ carried over that is landed will be counted against the ACL as increased by the total carryover for all LAGC IFQ vessels. Carryover will retroactively apply to unused FY 2010 IFQ and FY 2011 IFQs will be adjusted.

16. Increase the IFQ Vessel Cap to 2.5 Percent

The 2-percent IFQ cap per vessel is increased to 2.5 percent of the total LAGC IFQ sub-ACL allocation to allow more flexibility and promote efficiency for vessels in fishing IFQs available to them. The 2.5-percent IFQ cap does not apply to IFQ vessels that also are issued a LA scallop permit. IFQ that is carried over does not contribute to the vessel's 2.5-percent IFQ cap because the

carryover is a temporary increase of the vessel's IFQ based on under-harvest the prior year. Because there is also a 5-percent overall cap on how much IFQ one entity may own, a vessel owner can own only two vessels to meet the 5-percent ownership cap. This alternative provides more flexibility to vessel owners to more effectively and efficiently fish their IFQs.

17. Permanent IFQ Transfers Separate From LAGC IFQ Permit

LAGC IFQ permit owners may permanently transfer some or all of their IFQ and its IFQ contribution percentage, independent of their IFQ permit, to another LAGC IFQ permit holder while retaining the permit itself. This measure enables vessel owners additional flexibility to buy or sell IFQ without impacting other permits on their vessel. This allowance only applies to IFQ permit holders that do not also have a LA scallop permit to prevent crossover of IFQ allocations between the two IFQ fleets that have separate allocations.

18. Revision of the EFH Closed Areas

To establish compatibility with the NE Multispecies FMP, Amendment 15 modifies the EFH closed areas in the Scallop FMP by removing the four EFH closed areas that were implemented in Amendment 10 to the Scallop FMP, and replaces them with EFH closed areas that are identical to the EFH closed areas implemented under the NE Multispecies FMP. These areas are the Closed Area I (CAI), CAII, Nantucket Lightship Closed Area (NLCA), and Western Gulf of Maine, Jeffrey's Bank, and Cashes Ledge Habitat Closed Areas. Coordinates for these areas are provided in the regulations in this final rule. A chart depicting these areas is in the FEIS for Amendment 15 (see **ADDRESSES**). These areas are closed to scallop fishing (and closed to all mobile bottom-tending gear under the NE Multispecies FMP) to minimize the adverse impacts of scallop fishing. This change in the EFH closed areas under the Scallop FMP makes the EFH closed areas consistent between the Scallop FMP and the NE Multispecies FMP, as intended under Joint Frameworks 16 to the Scallop FMP and 39 to the NE Multispecies FMP (Joint Framework 16/39) (69 FR 63460, November 2, 2004). With inconsistent areas, the scallop access areas in CAI, CAII, and the NLCA were inconsistent with the area rotation program established under the Scallop FMP because they were restricted to areas smaller than designed. These areas were originally implemented under Joint Framework 16/39, but were vacated by a Federal Court order resulting from a lawsuit on that action. That order specified that the EFH closed areas could only be changed through an FMP amendment. The EFH closed areas in this final rule address the inconsistency while the Council continues to develop EFH measures under Phase 2 of its Omnibus EFH Amendment. In addition, the access areas in CAI and the NLCA have been changed to reflect the revised boundaries, and are now consistent with the original area rotation strategy implemented under Amendment 10 to the FMP and Joint Framework 16/39.

19. Establish Third-Year Default Measures Through the Biennial Framework Process

Fishery specifications in the scallop fishery are generally set every 2 yr, through the biennial framework adjustment process. This measure extends the fishery specification process to include a third year of allocation measures that would be effective if subsequent framework actions are delayed. Currently, measures from the prior FY roll over to the next FY while the implementation of the new set of management measures is pending, but the measures that roll over are often not appropriate for the status of the resource because they were established specific to the resource conditions in the prior (second) year. By setting the measures for the third year in the framework, the measures are more likely to be appropriate for the condition of the fishery and resource. Third-year measures will need to be set with sufficient precaution to take into account the uncertainty associated with projections for the third year. The third-year measures would be superseded by the measures developed in the biennial framework adjustment for that year as soon as it is implemented.

20. New Frameworkable Measures

The following measures are added to the current list of measures that can be adjusted under the Scallop FMP by framework action.

Modify the LAGC possession limit: The possession limit for LAGC vessels can be modified upward or downward by framework action. The intent of this measure is that any modification of the possession limit would not modify the nature of the LAGC fleet and would be consistent with the Council's vision to maintain a small-vessel fleet under LAGC provisions. While the Council specified in the Amendment 15 document that the possession-limit adjustments could be done for IFQ vessels, it also determined that the regulations should specify that possession limit adjustments could be made through the framework process for all LAGC vessels, including LAGC NGOM and Incidental vessels.

Adjustment to aspects of ACL management: All of the ACL-related measures specified in this action can be modified through framework actions including: Definitions and specification of OFL, ABC, ACLs and ACTs, all of which are specifically intended to be changed in future frameworks or specification packages as new information becomes available about the resource and fishery; buffers identified for management uncertainty or scientific uncertainty (ABC control rule); AMs for scallop ACLs and other sub-ACLs allocated to the scallop fishery; monitoring and reporting requirements associated with ACLs; timing of AM measures; and adoption of sub-ACLs for other species that are not currently part of this program.

Adjusting EFH Closed Area Management Boundaries

The framework action proposing the boundary change will include an analysis of the impacts of the specific boundaries considered. This additional framework authority will not allow adoption of new EFH closed areas.

Adjusting RSA Allocation

Under Amendment 15, 1.25 million lb (567 mt) of scallops is set aside annually for scallop RSA projects, regardless of the total projected catch for the fishery. In the future, the value could be increased or decreased by framework action.

21. Changes to the Scallop RSA Program

Amendment 15 contains several adjustments designed to improve the RSA Program so that it is more efficient, and so that awards under the Federal grants process can be provided near or before the start of the scallop FY on March 1.

Announce (Publish) Federal Funding Opportunity (FFO) as Early as Possible

The announcement of the FFO will be published as soon as possible in the year preceding the year in which research would be conducted. If this results in more timely reviewing and processing of awards, this will maximize time for research and compensation trips before the end of the FY. This will be facilitated by the Amendment 15 proposal to allocate 1.25 M lb (567 mt) to RSA program annually (see below).

Enable Multi-Year Awards

Previously, research priorities, TACs for RSAs, and approved research

projects were limited to 1 yr. Under Amendment 15, RSA proposals and compensation may span up to 2 yr, corresponding with the biennial framework process. Projects could be awarded for 1 or 2 yr. Applicants can apply for RSA for the first year, second year, or both. This measure increases flexibility for the applicant, provides funding for some longer term projects, and potentially reduces time and resources spent on the application and review process.

Establish RSA Allocation as a Fixed Amount of Pounds Rather Than a Percent of Total Catch

Previously, 2 percent of access area TACs and open area DAS were set aside for the Scallop RSA Program. TAC and DAS vary depending on the total TAC and DAS for the fishery. Amendment 15 modifies the Scallop RSA Program so that 1.25 M lb (567 mt) is set aside for the Scallop RSA Program. In addition, open area RSA will be awarded in pounds rather than DAS. Total projected catch for the fishery may vary from year to year, but the amount of catch set-aside for research will be constant at 1.25 M lb (567 mt), unless changed through a framework adjustment. Assuming a projected catch of about 50 million lb (22,680 mt) for the fishery, 1.25 M lb (567 mt) equals about 2.5 percent. This is higher than recent levels to recognize the importance of research and scallop resource surveys for the success of the area rotation program, but it does not create a separate pool of RSA for scallop resource surveys.

Allocating this fixed amount should enable the grant awards to be issued earlier, because the amount of TAC available for research will be known in advance and will not change from year to year. The specific areas that will have available RSA would be identified in the framework, but RSA awards can still be made before approval of the framework, based on total scallop pounds needed to fund the research. Recipients could either choose to wait until NMFS approval of the framework to begin compensation fishing within approved access areas, or could begin compensation fishing in open areas prior to approval of the framework. The intent is to help improve timeliness of the scallop RSA program. This should only be an issue for the first year of a framework, because area-specific RSA pounds will be known for the second year of the framework action.

Rollover of Unused RSA Pounds To Compensate Awarded Projects

If updated analyses suggest that the price per pound estimates used in the FFO were low, and if all the scallop RSA TAC is not allocated, NMFS can allocate unused TAC to compensate awarded projects or to expand a project rather than having that RSA go unused. If there is RSA TAC available after all awards are made, a project that was already awarded RSA would be permitted to apply for additional TAC to expand its research project or for compensation if the actual scallop price per pound was less than estimated. The implementation details of this were not specified in Amendment 15. This provision enables NMFS to provide the opportunity for this reallocation of available RSA pounds as part of the original FFO for the project. The FFO will specify the conditions under which a project that has been awarded RSA could be provided additional RSA pounds as supplemental compensation to account for lower-than-expected scallop price or for expansion of the approved project.

Extension for Harvesting RSA Compensation

Previously all RSA TAC had to be harvested by the end of the FY for which it is awarded. Amendment 15 allows an RSA award recipient to harvest RSA compensation TAC for up to 3 months (*i.e.,* prior to June 1) into the subsequent FY. Allowing vessels involved in RSA projects to harvest RSA TAC into the next FY provides flexibility for participating vessels and researchers, and is consistent with carryover provisions for the fishery as a whole.

Specify Regulations From Which RSA Projects Would Be Exempt

This final rule establishes a list of the scallop management measures from which RSA funded projects may be exempt. The researcher will need to list the measures the project is proposed to be exempt from in the RSA proposal. The researcher will not need to apply for an exempted fishing permit (EFP) to be exempt from the following restrictions: Crew restrictions; seasonal closures in access areas; and the requirement to return to port if fishing in more than one area. These exemptions will be issued by the Regional Administrator through a letter of authorization. The exemptions will be issued for research trips under the applicable RSA project. RSA compensation fishing trips are not eligible for exemption from these restrictions because compensation trips are intended only to provide researchers with the ability to collect funds through normal fishing operations.

Increase Public Input on RSA Proposals

Although the Council recommended that the Council's Scallop Advisory Panel members play a more prominent role in setting research priorities and reviewing proposals, no regulations implementing this suggestion are necessary. NMFS will seek more input from the Council's Scallop Advisors through the next solicitation for scallop RSA proposals. Review of RSA projects under the Federal grants program is limited to individuals that do not have any relationship to or vested interest in the proposed research.

Comments and Responses

Nine relevant comment letters were received on Amendment 15 and its proposed rule. Four addressed the regulatory text included in the proposed rule, with the rest addressing other topics.

General Comments

Comment 1: Comments from five individuals focused on the qualification criteria for the LAGC scallop fishery. Commenters believed that the qualification period of 2000 through 2004 unfairly eliminated vessels from the fishery that had a history of fishing for scallops after 2004.

Response: The LAGC fishery was implemented through Amendment 11 and its measures were previously available for public comment prior to its approval. While Amendment 15 does include measures affecting the LAGC fishery, they are not related to the original qualification criteria or development of the IFQ program.

Comment 2: One commenter states that all species, including scallops, are overfished, and that NMFS gathers its stock information purely from the fishing industry.

Response: NMFS has partially approved Amendment 15 because it is consistent with the MSA and promotes a sustainable scallop fishery that will be available to future generations. Comments that scallops are overfished and that the only data used to assess stocks is provided by the fishing industry are inaccurate, and not relevant to the measures included in Amendment 15.

LAGC Trip Limits

Comment 3: One commenter opposed raising the trip limits for the LAGC IFQ fleet. The commenter believes that the small-boat nature of the fishery could be

compromised and the LAGC IFQ fleet would begin to resemble the limited access fleet.

Response: LAGC IFQ vessels are limited individually by their yearly allocation and by a cap of 2.5 percent of the overall quota. The 600-lb (272.2-kg) possession limit is expected to increase efficiency for some IFQ vessels and should enable vessel owners to better offset rising trip costs. Raising the daily trip limits for LAGC vessels from 400 lb (181.4 kg) to 600 lb (272.2 kg) is unlikely to change the small-boat nature of the IFQ fishery. The Council was concerned about this as well and rejected higher possession limits as a result.

Comment 4: One commenter stated that he has been reduced from a 400 lb (181.4 kg) trip limit to a 40 lb (18.1 kg) trip limit. He requested that the trip limit be raised to 250 lb (113.4 kg) for general category permits.

Response: It appears that the commenter is commenting on the LAGC incidental catch (IC) permit, which has a 40-lb (18.1-kg) trip limit. The LAGC IC trip limit was implemented through Amendment 11, and its measures were previously available for public comment prior to its approval. While Amendment 15 includes measures pertaining to the LAGC IFQ trip limit, they are not related to the IC permit.

Comment 5: One commenter questioned raising the trip limits for the LAGC IFQ fleet. The commenter asked why, after significantly reducing the number of boats in the LAGC IFQ fleet (through the LAGC qualification process), the trip limits are being raised. He believes that the possibility of higher trip limits should have equated to flexibility in the form of a hardship clause associated with the LAGC IFQ qualification process.

Response: The inclusion of a hardship clause in the LAGC qualification process was discussed by the Council during public hearings in the process of creating Amendment 11, and it was eventually not adopted. The change in LAGC IFQ trip limits in Amendment 15 is not related to the decrease in the number of general category vessels and, as such, has no relation to the possibility of a hardship clause associated with the LAGC IFQ qualification process.

ACLs and AMs

Comment 6: Oceana contended that Amendment 15 fails to account for incidental catch of a variety of species. They stated that the Council failed to include enough species in the FMP for ACL management, and that other species, like sponges and starfish, should be included as ecosystem component species. Oceana commented that, by not considering the inclusion of a wider range of species in the Scallop FMP, the Council failed to comply with requirements of the MSA and failed to comply with procedural and analytical requirements of NEPA and the MSA. Oceana also commented that the Council acted arbitrarily and capriciously in excluding additional species and in establishing the 5-percent catch level criteria for considering inclusion of non-target species in the Scallop FMP.

Response: Oceana has commented similarly on other ACL amendments. In a pending lawsuit on similar grounds, Oceana has also challenged the approval and implementation of Amendment 16 to the NE Multispecies FMP. ACLs must be established for each managed species to prevent or end overfishing and the MSA guidelines for implementing ACLs allow but do not mandate the Council, at its discretion, to designate other species as target, non-target species, or ecosystem components, if appropriate. The only species that the Council identified as a non-target species with a sub-ACL is YTF, and the Council's justification for such a decision is sound. YTF is historically one of the highest non-target catches in the scallop fishery. While other species are caught in the scallop fishery, they are not caught at the same level as YTF. The Mid-Atlantic Council has proposed ACLs for summer flounder, which are also caught in the scallop fishery. However, all other species caught are reported and information on catch is available for analysis to determine if additional management measures for such species are needed under the Scallop FMP. The Council has determined that the primary FMP will establish ACLs for the target species, and that AMs will be borne by the fishery that targets the fish, even if that means that the scallop fishery has triggered the AM. The Council used this rationale to recommend the 5-percent threshold for establishing sub-ACLs in the Scallop FMP. Although Oceana disagrees with this approach, this decision by the Council is sound and in compliance with the MSA.

Comment 7: FSF commented that the approach to specification-setting based on the ACL flow chart and establishing scientific uncertainty are overly cautious and can prevent the achievement of OY. FSF expressed concern that the analytical model that determines the reduction from OFL to ABC based on scientific uncertainty has many ''less than rigorous'' qualitative assumptions. FSF supports making changes to the ABC control rule frameworkable and recommended that the Council and NMFS revisit the formula in the near term to ensure that the fishery's optimum yield is achieved.

Response: The PDT developed the mechanism for evaluating the risk of exceeding OFL over the course of several meetings. The SSC ultimately approved the PDT's uncertainty mechanism. As such, this approach is based on best available science. It establishes a sufficient level of precaution in managing the scallop fishery under ACLs while providing catch levels that are similar to status quo management. If and when new scientific information becomes available, it will be incorporated into the assessment of the scallop resource and fishery, and the evaluation of risk associated with scientific uncertainty.

Comment 8: The Fisheries Survival Fund (FSF) strongly opposed provisions that would re-distribute catch allocation to the LAGC fleet if the limited access fleet's AM exception is enacted. FSF stated that this provision was not properly developed or analyzed, and was added to Amendment 15 in the ''final hour'' of deliberation. Further, FSF believes that this reallocation raises concerns about the lack of precautionary measures in the LAGC fishery that would be equivalent to establishing the ACT for the limited access fleet.

Response: NMFS agrees with FSF's concerns about this measure and this measure has been disapproved for the reasons stated above.

Comment 9: FSF commented that the AM exception trigger level of F = 0.24 is incorrect and that under the AM exception, the F associated with the catch by LA vessels should be evaluated against the overall ACL, not the sub-ACL for the LA fleet.

Response: This trigger level was incorrect in the proposed rule and the error has been corrected in this final rule. The mistake occurred because the Amendment 15 document referred to current F reference points that would be increased under Amendment 15. The increased threshold, in particular the ABC/ACL F = 0.32 (as opposed to the current F = 0.28 threshold), means that the AM exception trigger should be set at 0.28 instead of 0.24. The Amendment 15 document is clear that the AM would not take effect if the F associated with the limited access fishery's catch is lower than the F associated with the whole fishery's ACL (*i.e.*, the ACL for the limited access and LAGC fleets combined).

Comment 10: FSF commented that the provision that exempts LAGC IFQ vessels from the YTF AM should be

disapproved because it unfairly provides an exemption from the AM for a small group of vessels and because there is new information suggesting that the IFQ fleet has a high level of YTF bycatch. FSF commented that ''* * * it is easy to envision many ways in which this discriminatory provision can run afoul of National Standards 2 (best science), 4 (conservation and management measure should be fair and equitable and reasonably calculated to promote conservation), and 9 (practicable reduction of bycatch).''

Response: The level of YTF bycatch by LAGC vessels in Southern New England (SNE) waters identified through recent bycatch analysis does raise a concern because it indicates that the LAGC fishery accounts for more approximately 20 percent of the SNE/Mid-Atlantic (MA) YTF catch in the scallop fishery. NMFS does not believe that the analysis represents sufficient justification to disapprove the measure because it does not violate any national standard or required provision of the MSA, as alleged by FSF. Moreover, this new analysis was not available or considered by the Council in time for the development and Council approval of Amendment 15. In addition, the analysis of YTF catch in 2010 does not present sufficient information to characterize the overall continual bycatch level in the individual fishing quota sector of the scallop fishery. NMFS has reviewed 2008 and 2009 fishery data and preliminary results show that the catch rate of YTF in the LAGC fishery was substantially lower in those years than in 2010. NMFS has therefore asked the Council to consider this new analysis for possible future changes to the Scallop FMP. In addition, the Council is considering issues related YTF catch by LAGC vessels, including the application of separate ACLs and AMs, under Framework Adjustment 23 to the Scallop FMP.

NMFS does not agree that the exemption is necessarily discriminatory or unfairly applied to the IFQ fleet in violation of National Standard 4. FSF states that the LAGC IFQ and limited access fleets are ''similar.'' This is not accurate, because fishing opportunities for IFQ vessels are more restricted than LA vessels. Although some limited access vessels have fished heavily in the SNE region recently due to high catch rates, limited access vessels are more mobile and are not as constrained to fishing in waters close to its home port. LAGC vessels are more constrained to fish within areas nearer to the vessel's home port due to vessel size and historical fishing practices. For LAGC IFQ vessels with ports in Rhode Island and Long Island, the closure AM could prevent them from operating at all while limited access vessels and LAGC IFQ vessels in other ports would be able to continue fishing. This exemption would prevent closures to the LAGC IFQ fleet that would substantially reduce their fishing opportunities in a more significant way than the limited access fleet. NMFS therefore finds, on balance, that the measure is not inconsistent with National Standard 4.

In addition, an overage of the YTF ACL that could be caused by yellowtail flounder bycatch in both sectors of the scallop industry would result in an AM that is consistent with the conservation measures and goals for yellowtail flounder under both the NE Multispecies and Scallop FMPs. Disapproving the exemption for LAGC vessels from the AM as a result of information showing the fishery catches yellowtail would not provide measures to sufficiently offset the negative impacts of closing the fishery to certain LAGC vessel owners that rely on that area to harvest scallops.

Comment 11: FSF commented that AMs for the LA fleet should be applied in the second FY after the ACL overage rather than in the first FY following the overage. FSF commented that vessels may have used all of their allocated DAS prior to the AM becoming effective. By then applying the DAS adjustments through the AM, vessels could be subject to a DAS reduction in the subsequent FY. FSF believes that this would be a disruption to fishing activity, would cause confusion, and would, in effect, make the AM effective in the second FY after the ACL overage as a result of the DAS payback in the subsequent FY. FSF pointed out that this is an administrative measure and that there is no requirement in the law that puts temporal restrictions on AMs.

Response: AMs could be established in the second FY following the ACL-overage; however, the Council was clear that its intent was to implement AMs as soon as possible, and that AMs for the LA fleet should be implemented in the first FY following the ACL overage. The Council stated this in its letter deeming the Amendment 15 proposed regulations in response to draft regulations that specified that AMs would be implemented in the second FY following the ACL overage. Specifically, the Council's letter stated:

> During development of Amendment 15 it was uncertain if subsequent year AMs were workable, but in the end the Council supported that if feasible, AMs are more effective if they can be implemented in the subsequent fishing year. So while there may be places in the document that suggest AMs may have to be two years out, the final intent of the Council was to make all AMs effective the subsequent year: LA AMs, LAGC AMs, NGOM AM, as well as AMs related to the YT flounder sub-ACL.

NMFS agrees that implementing AMs in the first FY after the ACL-overage is consistent with the final guidelines for implementing AMs (74 FR 3211, January 16, 2009) which specify that ''If an ACL was exceeded, AMs must be triggered and implemented as soon as possible to correct the operation issue that caused the ACL overage * * * .'' NMFS has not therefore changed the provision based on FSF's comment because the Council's intent was clear, but NMFS also recognizes the operational complexity that may result from mid-year adjustment of DAS. Therefore, the Council has been informed of FSFs concerns so that changes, if appropriate, can be considered in a future action.

Comment 12: Oceana contended that Amendment 15 fails to implement sufficient AMs for YTF. It commented that the ''real time'' AMs in the form of in-season closures were not sufficiently considered and that the LAGC exemption could significantly affect YTF recovery.

Response: Both the NE Multispecies and the Scallop FMP incorporate ''next year'' AMs through Amendment 16 and Amendment 15, respectively. Although the Council considered inseason AMs for the YTF sub-ACL, it chose to implement the ''next year'' AMs consistent with the NE Multispecies FMP and in order to prevent inseason scallop fishery problems that could result. Mainly, the Council was concerned that inseason AMs might actually increase YTF bycatch because vessel owners and operators would race to complete trips before the yellowtail sub-ACL would be harvested. This derby effect would decrease incentive to avoid YTF thereby potentially increasing yellowtail catch.

EFH

Comment 13: Oceana opposed the proposed modification of the EFH closed areas under Amendment 15, and stated that the changes to the EFH closed areas should be included in Phase 2 of the EFH Omnibus Amendment, rather than in Amendment 15. Oceana believes that Amendment 15 fails to use updated analytical models used in the development of the EFH Omnibus Amendment.

Response: NMFS disagrees, and believes that the appropriate first step in maintaining EFH closed areas while the EFH Omnibus Amendment continues to be developed is to make the EFH closed

areas consistent between the Scallop and NE Multispecies FMPs as intended. The areas have not been made consistent because a Federal court ruled that an earlier attempt to modify the EFH closed areas through a framework adjustment was not an appropriate procedural mechanism for making such change. There was never a determination that the designated areas were flawed in any way. Joint Framework 16/39 previously analyzed these EFH closed areas, as well as the expansion of the access areas within CAI and NLCA. The analysis determined that the elimination of conflicts between the two FMPs will result in the closure of the same areas to gears used in both fisheries, thus providing more effective protection of benthic EFH from the adverse effects of fishing. Although the scallop access areas will slightly expand within portions of CAI and NLCA, the EFH value of the revised EFH closed area is not significantly different from the EFH value of the area that currently is protected. The overall substrate compositions of both areas (*i.e.*, highly dynamic sandy environments) is very similar and the areas where access would be expanded are not areas of high habitat vulnerability. In addition, since the areas were designed under both the Scallop and NE Multispecies FMPs to protect NE multispecies EFH, the only reason that they have not been made consistent is that there has not been an appropriate Scallop FMP amendment that could address the issue. Furthermore, implementing the changes to the EFH closed areas through Amendment 15 will have no impact on the designation of areas to protect EFH under the EFH Omnibus Amendment.

Comment 14: FSF commented that it strongly supports the modification of the EFH closed areas, and that aligning the EFH closures in the scallop FMP with the closures in the NE Multispecies FMP concludes a long overdue housekeeping of the regulations. FSF commented that having consistent EFH closed areas will mean that more of the scallop resource will be available for harvest in the rotational management scheme, representing a tremendous benefit to the fishery and the nation.

Response: NMFS agrees that the modification of the EFH closed areas makes the management of Georges Bank and Southern New England access areas consistent with the original intent of the Scallop FMP while remaining consistent with the NE Multispecies FMP and continued protection of NE Multispecies habitat.

Catch Monitoring

Comment 15: Oceana contended that Amendment 15 fails to include alternatives to monitor ACLs and ensure accountability. Oceana does not believe that the status quo monitoring program, with the addition of daily reporting of YTF catch, will be sufficient. Oceana does not believe that this monitoring system has been sufficiently analyzed and questioned the reliability of self-reported bycatch. Oceana also noted that NMFS stated that observer coverage levels are insufficient to monitor catch (referencing a memorandum from the Director of the Northeast Fisheries Science Center).

Response: NMFS will utilize a statistical monitoring approach, called the cumulative kept-all catch estimate (kept-all estimate), that applies catch data from observed trips to catch reports submitted by vessel operators. This methodology was developed for Northeast fisheries, peer reviewed and accepted, and included in the standardized bycatch reporting methodology (SBRM). The addition of daily VMS catch reporting will enable NMFS to more effectively expand the kept-all estimate to the scallop fishery. Observer coverage in the scallop fishery is determined through the SBRM and expanded to account for specific species monitoring needs (such as elevated coverage rates and seasonal coverage rate considerations). The combination of the expanded catch reporting and the observer coverage in the scallop fishery is sufficient to monitor the YTF catch relative to the yellowtail sub-ACL. The YTF sub-ACL will not trigger real-time closures. As such, more rigorous analysis of data throughout most of the scallop FY can be done to ensure that all data are captured and matched appropriately to scallop trips. This may not be possible with an inseason closure, because it would allow less time to review data and would require a quicker decision process to avoid exceeding an ACL.

Oceana's concerns about vessel operator self-reporting are unfounded. Vessel operators report catch, including discards and kept landings. Discards can be compared to observer reports, which are considered the most reliable discard information. Kept scallops and fish are compared to dealer reports. Although the daily catch reports will be used to provide periodic reports, the dealer-reported landings, which are matched to scallop trips and daily reports, will ultimately provide the data for the kept-all estimate. A large portion of the scallop industry has demonstrated a strong interest and willingness to work collaboratively to prevent excessive YTF catch. An example is the participation of several scallop vessels in a recent voluntary YTF catch reporting program administered by the University of Massachusetts, Dartmouth, School for Marine Science and Technology (SMAST).

NMFS believes that Oceana's use of the Northeast Fishery Science Center Director's memorandum regarding the Northeast Multispecies Sector program is taken out of context. The SBRM establishes observer coverage levels that are sufficient to meet minimum bycatch monitoring needs. The SBRM levels are then expanded to account for variations in the fisheries. The issues with monitoring sector allocations are different, because the amount of catch allocated to each sector is relatively small, requiring more vigorous monitoring to ensure the allocations are not exceeded. Therefore, the Science Director's memorandum should not be considered to be applicable to all fisheries and monitoring programs for stock-wide ACLs or large sub-ACLs.

Overfishing Definition

Comment 16: FSF commented that it continues to have concerns about the hybrid OFD proposed in Amendment 15. It commented that the concern that the status quo OFD could result in growth overfishing has not been borne out, the stock continues to thrive in the open areas, with more and larger scallops appearing year after year, and rotational management continues to be a success. FSF commented that as the hybrid OFD is implemented, NMFS must make every effort to ensure the effects of the hybrid OFD are clear and transparent to all the stakeholders in the scallop fishery. Further, FSF commented that NMFS needs to ensure that the full extent of the scallop resource is being captured by surveys, in particular in the nearshore areas outside of the routine NOAA [Woods Hole] surveys. FSF noted that information from nearshore areas is becoming more important as the fishery becomes managed by ACLs and on a more explicitly spatial basis.

Response: The hybrid OFD is aligned better with area rotation than the status quo OFD. Although the scallop resource in open areas has remained very productive and has supported successful fishing opportunities, the potential for the opposite result with the status quo OFD is high. Amendment 15 explains that if a large amount of the scallop resource is within areas closed to scallop fishing, the open area F would be driven up to account for lower

fishing mortality stock-wide. If total biomass declines from its current levels, and a high amount of that biomass is in areas closed to scallop fishing, the hybrid OFD is expected to protect against growth overfishing in open areas that would be caused by elevated F under the status quo OFD. The Scallop PDT has frequently discussed the issue of additional surveys in nearshore areas, particularly in the Mid-Atlantic region and will continue to do so in the development of measures under the next biennial framework.

Third-Year Default Measures Through the Biennial Framework Process

Comment 17: FSF supports the provision establishing third-year default measures through the biennial framework process. FSF commented that this provision represents a common sense solution to avoid problems with potentially delayed framework actions. FSF commented that it is only a partial and imperfect solution and that FSF is committed to working NMFS to achieve the common goal of timely implementation of the scallop regulations. FSF commented that there is no sound reason for the continuing lengthy post-promulgation reviews that have endemically caused the scallop specifications to be delayed until well into the scallop fishing year.

Response: NMFS agrees that this will improve the transition to new measures but will not solve the recurring problem of management measures being implemented after the start of the fishing year. NMFS is committed to working with the Council, Northeast Fisheries Science Center and industry to work on solutions.

Changes From Proposed Rule to Final Rule

In § 648.14(i)(4)(ii)(B) and (i)(4)(iii)(B), the term TAC is changed to ACL, and a reference to § 648.53(a)(5) is changed to § 648.53(a)(4)(i) in order to reference the correct ACL.

In § 648.53(b)(4)(iii)(A), the F trigger for the LA AM exception is changed from F = 0.24 to F = 0.28, and the F associated with the fishery's total ACL is changed from F = 0.28 to F = 0.32.

In § 648.53, paragraph (b)(4)(iii)(B) has been removed because the measure was disapproved by NMFS.

In § 648.53(b)(4)(iv), the F trigger for the LA AM exception is changed from F = 0.24 to F = 0.28, for the reasons stated above.

In § 648.53, paragraph (h)(2)(v)(B) is clarified so that IFQ carried over from one FY to the next is not applicable to the 2.5-percent IFQ cap or the 5-percent ownership cap for the FY in which the carryover IFQ is applied.

In § 648.53(h)(3)(ii)(A), the reference to § 648.53(a)(3)(ii) and (iii) is changed to (a)(4)(i) in order to reference the correct ACL.

In § 648.53(h)(5)(iii) and (h)(5)(iv)(C), the term TAC is changed to ACL to reflect ACL management measures.

In § 648.53(h)(5)(iv), the restriction pertaining to when IFQ transfers must be submitted is clarified to indicate that vessel owners may not have sufficient time in the remaining FY to utilize transferred IFQ for which an application was received less than 45 prior to the end of the FY.

In § 648.55(f)(26), the term DAS is removed because DAS set-asides have been eliminated under Amendment 15.

In § 648.56, paragraph (a) is changed to clarify the timing of the FFO and to change the regulatory reference from § 648.53(b)(3) to § 648.56(d), because § 648.53(b)(3) no longer includes DAS set-asides, since Amendment 15 allocates set-aside only in pounds of scallops.

In § 648.56, paragraph (c) is revised by changing NMFS to NOAA, since the responsibility to administer the Federal grants program is not delegated to NMFS.

In § 648.56, paragraph (d) is revised to clarify how set-aside pounds will be awarded relative to access areas.

In § 648.56, paragraph (f) is revised to clarify the administration of scallop RSA award carryover.

Revisions to the area coordinates for the Sea Scallop Access Areas have been included in § 648.59(b)(3) and (d)(3) to reflect the revised coordinates resulting from the change to the EFH closed areas specified in § 648.61.

In § 648.64, values for YTF sub-ACLs are included for FYs 2011 and 2012.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the national standards and other provisions of the MSA and other applicable laws.

The Office of Management and Budget has determined that this rule is not significant according to Executive Order 12866.

The Assistant Administrator for Fisheries has determined that the need to implement these measures in an expedited manner in order to help achieve conservation objectives for the scallop fishery and certain fish stocks, as well as threatened and endangered sea turtles, constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness.

The measures in this final rule to implement Amendment 15 include regulatory changes that are administrative and are only minor adjustments to the Scallop FMP management measures overall. The ACL management measures in Amendment 15 are administrative, establishing the mechanism for managing the scallop fishery under ACL requirements. Actual values for ACLs are established under Framework 22, if approved, and delaying the effectiveness of the ACL provisions in Amendment 15 would constrain the timing of implementation of the measures under Framework 22, including the appropriate management measures and vessel allocations for FY 2011. FY 2011 began on March 1, 2011, and the scallop fishery has been operating under FY 2010 management measures, including DAS, observer set-aside, and access area trip allocations, in lieu of Framework 22 FY 2011 measures. The DAS current allocations are higher than the measures proposed in Framework 22, which were developed to reflect an updated estimate of the annual catch that can be harvested without resulting in overfishing. Accordingly, a delay in effectiveness for this final rule risks creating a race for fish in advance of Framework 22 measures, and vessel owners and operators have the potential of exceeding the FY 2011 catch levels specified in Framework 22. Further continuation of the inconsistent FY 2010 management measures increases the risk that the actual F will exceed the target level upon which Framework 22 management measures are based. Allocations in FY 2011 need to be lower than those in place in FY 2010 in order to meet the management target F specified in the ACL measures of this final rule. Estimates from the 2010 stock assessment, which were endorsed by the SARC–50 review panel, are best available science, and show that biomass was just above, and fishing mortality was at, MSY levels in 2009. In addition, actual F has been higher than projected in FYs 2008–2010, a situation which was addressed in both this final rule's ACL measures and the DAS model used to calculate Framework 22 vessel allocations. Constraining the implementation of Framework 22 by instituting a delay in Amendment 15 effectiveness would be contrary to the public interest because continuing this trend in higher-than-projected F could result in overfishing and future decreases in allowable harvest. Current scallop catch rates in open areas have been the highest on record, and vessels may continue to fish beyond their

Framework 22 DAS allocations until this action is effective because they are limited in where else they can fish.

In addition, Framework 22 includes management measures necessary to achieve conservation objectives for threatened and endangered sea turtles by limiting the number of Mid-Atlantic scallop access area trips each vessel can take between June 15 and October 31, 2011. This limitation complies with one of the reasonable and prudent measures in the most recent Biological Opinion completed for the scallop fishery. If implementation of Amendment 15 is delayed further beyond June 15, 2011, thus further delaying the Framework 22 turtle conservation measures, the measures from last year will continue. The measures currently in place allow for more fishing effort during these months than intended under Framework 22 and further delay could potentially compromise sea turtle conservation benefits during this short window.

Expediting the implementation of the Amendment 15 ACL management measures, thus enabling the final rule to Framework 22 to establish actual ACL values, will also have greater public benefit because enacting the allocations of IFQ and access area trips would have positive impacts on the economics of the fishery. Currently, vessels have already fished their limited number of scallop access area trips and have no other access areas available from which to harvest scallops. Amendment 15 will enable Framework 22 to open up three additional access areas for vessels and take pressure off of vessel owners/operators from using more DAS than allocated in FY 2011. In addition, LAGC IFQ vessels will be able to take advantage of this final rule's management measures, such as increased trip possession limits, carryover allocations, and improved permanent transfer opportunities, while also benefiting from their increased IFQ allocations specified through the final rule to Framework 22.

A delay in effectiveness for the Amendment 15 management measures that improve the RSA program is also contrary to the public interest and undermines the ability of researchers to complete their research projects and potentially hinder the quality of their research. Proposals that have been submitted for NOAA Grants Program review are currently awaiting final award notification from NOAA. This cannot occur until the revisions to the RSA program under Amendment 15 are effective. Many of the projects conducted under the Scallop RSA program rely on careful timing for research activity and coordination with participating vessels. Further, many of the Scallop RSA projects completed in the past provide critical information for continued improvements to the overall management of the scallop fishery. Therefore, in order to ensure that RSA projects can be issued final grants awards and begin research operations and coordination with participating vessels, the measures that improve the RSA program should be effective upon publication of this final rule.

NMFS was unable to incorporate the 30-day delay in effectiveness into the timeline for Amendment 15 rulemaking due to the delay in the Council's adoption of Amendment 15 from June 2010 to September 2010, and Amendment 15 was not formally submitted to NMFS until January 2011. In addition, the Council submitted Framework 22 in late March 2011, more than 3 weeks after the March 1 start of the 2011 scallop FY. With such delays, NMFS was unable to complete the rulemaking process, make a final determination to approve the amendment, and implement Amendment 15 measures in the 2 months prior to the start of FY 2011. As a result, the final allocations for FY 2011, as specified through the final rule to Framework 22, could not have been implemented prior to the start of FY 2011 or to the implementation of this final rule to Amendment 15.

The Council prepared an FEIS for Amendment 15; an NOA was published on April 1, 2011. The FEIS describes the impacts of the proposed Amendment 15 measures on the environment. ACL and AM measures under Amendment 15 would have minimal impacts on the human environment compared to taking no action, because both establish similar limitations on scallop fishing. Other measures to improve management of the scallop fishery are expected to have positive impacts on the human environment, as a result of improved management of the scallop fishery.

This rule contains a revision to a current collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Public reporting burden for this collection of information, the expansion of the VMS catch report to all areas (OMB Control Number 0648–0491), is estimated to average 2 min per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments on these or any other aspects of the collection of information to OMB by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285 and to the Regional Administrator at the address provided in the **ADDRESSES** section of this rule.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a final regulatory flexibility analysis (FRFA) in support of Amendment 15. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities. The FRFA incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement Amendment 15, the comments and responses in this final rule, and the corresponding economic analyses prepared for Amendment 15 (*i.e.*, the FEIS and the RIR). The contents of these incorporated documents are not repeated in detail here. A copy of the IRFA, the RIR, and the FEIS are available upon request (see **ADDRESSES**). A description of the reasons for this action, the objectives of the action, and the legal basis for this final rule are found in Amendment 15 and the preamble to the proposed and final rules.

Statement of Objective and Need

This action proposes to implement ACL and AMs for the scallop fishery, as well as other measures to improve management of the scallop fishery. A description of the management measures, why this action is being considered, and the legal basis for this action are contained in the preamble of this final rule and are not repeated here.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NMFS did not receive any comments pertaining to the IRFA or the economic impacts of these measures more generally on small businesses. Summaries of the public comments and NMFS's responses are provided in the ''Comments and Responses'' section of this final rule.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

These final regulations will affect vessels with LA and LAGC scallop permits. The FEIS for Amendment 15 provides extensive information on the number and size of vessels and small businesses that would be affected by the proposed regulations, by port and state. There were 313 vessels that obtained full-time LA permits in 2010, including 250 dredge, 52 small-dredge and 11 scallop trawl permits. In the same year, there were also 34 part-time LA permits in the sea scallop fishery. No vessels were issued occasional scallop permits. By the start of FY 2010, the first year of the LAGC IFQ program, 362 IFQ permits (including 40 IFQ permits issued to vessels with a LA scallop permit), 127 NGOM, and 294 incidental catch permits were issued.

The RFA defines a small business entity in any fish-harvesting or hatchery business as a firm that is independently owned and operated and not dominant in its field of operation (including its affiliates), with receipts of up to $4 million annually. The vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than $3 million according to dealer data for FYs 1994 to 2009. In FY 2009, total average revenue per full-time scallop vessel was just over $1 million, and total average scallop revenue per general category vessel was just under $80,000. The IRFA was completed consistent with analyses under the RFA for recent scallop actions, and as such, considers receipts of individual vessels and did not consider individual entity ownership of multiple vessels.

The Office of Advocacy at the Small Business Association (SBA) suggests two criteria to consider in determining the significance of regulatory impacts; namely, disproportionality and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of ''small entity''), not the difference between segments of small entities. Amendment 15 is not expected to have significant regulatory impacts on the basis of the disproportionality criterion, because all entities are considered to be small entities in the scallop fishery and, therefore, the action will not place a substantial number of small entities at a significant competitive disadvantage relative to large entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action implements an expansion of current VMS catch reporting requiring all LA and LAGC IFQ scallop vessels to report YTF catch (kept and discards) and all other species kept (including scallops) on all scallop trips. Such reports must be submitted for each day fished by 9 a.m. of the day following the day on which the fishing activity occurred. Previously, this requirement applied only to access area scallop trips. The expansion of the requirement to all areas increases the current burden cost of 333 hr at a total cost of $4,995 to 1,000 hr, at a total cost of $15,000 for all scallop vessels combined. The expansion is needed to monitor YTF bycatch relative to the sub-ACL for YTF under Amendment 15.

Amendment 15 does not duplicate, overlap, or conflict with any other Federal law.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

A summary of the economic impacts of adopted and alternative measures is provided below. Detailed economic impact analysis is provided in Section 5.4 and Appendix III of the FEIS for Amendment 15 (see **ADDRESSES**).

Each vessel within the same permit category (*i.e.,* full-time, part-time, and occasional) is allocated the same number of DAS and access area trips. LAGC IFQ vessels receive 5.5 percent of the total fishery ACL after research and observer set-asides are removed, and IFQs are proportionately allocated based on a percent share of the 5.5-percent fleetwide allocation. Therefore, those measures that affect overall projected landings will have proportional impacts on all the participants because allocations for all vessels will be adjusted up or down in the same percentage. Some of the other measures are specific to each fishery, however, and they will result in differential impacts, as discussed below for each individual action. In summary, although some specific measures, such as the hybrid OFD, catch limits, and AMs will have some negative impacts on the revenues and profits from the scallop fishery in the short-term, the benefits from the other measures, including the measures that reduce scientific or management uncertainty, the modification of the EFH areas, modifications to the LAGC possession limits and other related measures are expected to offset in part or in full these short-term negative effects. As a result, the aggregate economic impacts of Amendment 15 measures, combined, in the short-term are likely to range from small negative to small positive. The action is not expected to have significant impacts on the viability of the vessels, because these impacts are estimated to be relatively small. In addition, even with negative impacts, the profit rate is estimated to exceed 20 percent of the gross revenue in the scallop industry, providing for short-term cash reserves to finance operations through several months or years until the positive effects of the regulations start paying off. In the long term, the economic impacts of the combined measures on the participants of the scallop are expected to be positive.

NMFS evaluated the Council's proposed measures relative to compliance with the MSA, including national standards, required provisions, and discretionary provisions, as well as with applicable laws and the FMP. NMFS has determined that Amendment 15, as partially approved by NMFS, is consistent with all National Standards and required provisions of the MSA. Without Amendment 15, the Scallop FMP would not be in compliance with the new ACL and AM requirements of the MSA and the management improvements and efficiencies created through other Amendment 15 measures would not be achieved. This would ultimately compromise NMFS's ability to effectively manage the scallop fishery overall.

The evaluation of Amendment 15 measures concluded that the suite of measures combine to minimize the negative impacts on qualified vessels. Positive impacts on the scallop fishery fleets are expected as the management measures in Amendment 15 continue to prevent overfishing, achieve OY on a continuing basis, and improve overall management efficiency.

A description of significant alternatives to the measures approved in Amendment 15, which affect the impact on small entities, and the reasons why these other alternatives were not adopted by the Council follows. NMFS does not have the discretion under the MSA to implement measures that were not adopted by the Council. Under the MSA, NMFS must either approve or

disapprove Council recommended alternatives or the action as a whole if alternatives cannot be disapproved without compromising the action as a whole. The discussion of the reasons for rejecting alternatives is relative to the Council's decision, with the exception of the measure that was disapproved by NMFS.

1. Compliance With MSA

ACL Structure and Subcomponents

Establishing ACLs in the Scallop FMP is expected to have long-term economic benefits on the fishery by helping to ensure that ACLs are set at or below ABC, in order to prevent the resource from being overfished and overfishing from occurring. Buffers for scientific and management uncertainty reduce the risk of fishery exceeding its ACL, thus reducing the risk of overfishing the scallop resource, with positive impacts on the overall scallop yield, revenues, and total economic benefits from the fishery. Establishing catch limits is expected to result in a similar landings stream compared to the status quo management. Even if the landing streams changed as a result of the new measures, the risk to the resource from overfishing due to scientific or management uncertainty is minimized because sources of uncertainty are better accounted for. This, in turn, is expected to keep the landings and economic benefits relatively more stable and reduce the uncertainty in business decisions over the long-term. The separation of an ACL into two sub-ACLs with associated ACTs is expected to have positive impacts on the scallop fishery and its subcomponents. Separating the two fleets with separate ACLs prevents one component of the fishery from impacting the catch levels of the other. This prevents negative economic impacts from spreading from one fleet to the other. No alternatives would generate higher economic benefits for the participants of the scallop fishery. Under the No Action alternative, there is a risk of overfishing the resource due to the scientific and management uncertainty that is not adequately addressed currently. Existing measures do not have well-defined accountability and payback mechanisms if catch limits are exceeded due to these sources of uncertainty, which could result in continual reductions in allocations, effort levels, and trips.

2. Implementation of AMs

LA AMs consist of the use of an ACT, and an overall DAS reduction to account for any overages. The deduction is applied in the FY following the FY in which the overage occurred (*e.g.,* an overage in FY 2011 would result in a DAS reduction in FY 2013). The overall economic impacts in the short term on the participants of the scallop fishery depend on whether or not the ACT prevents an ACL overage. Exceeding ACL in one FY will have positive economic impacts on the participants of the scallop fishery in that FY, but it would be followed by negative impacts in the FY in which the AM is applied, since DAS would be deducted based on the level of the overage. The short term impacts averaged over the applicable FYs would be neutral or small. The proposed action also includes an exception to the LA AM, which would stop the AM from being implemented, even if the LA sub-ACL exceeded. If there is no biological harm, and updated estimates of F are actually lower than what was projected, there will be no reason for a DAS reduction in the subsequent year. This minimizes or even eliminates any potentially negative impacts, since the AM would not be implemented.

For the LAGC fishery, if an individual vessel exceeds its IFQ (including leased IFQ), the amount of IFQ equal to the overage is deducted from the vessel's IFQ in the FY following the FY in which the overage occurred. Similarly, if the NGOM component of the fishery exceeds the overall hard-TAC (equal to the NGOM ACL) after all data are final, then the hard TAC could be reduced by the amount equal to the overage in the following FY. Exceeding the vessel's IFQ in one FY will have positive economic impacts in that FY, followed by negative impacts in the FY in which the deduction is applied, so the short-term impacts averaged over these 2 FYs would be neutral or small. The measures help reduce the risks of exceeding ACLs and have positive impacts on the scallop yields and economic impacts from the fishery as a whole over the long term.

The Council also considered making the AMs effective in the second FY following the FY in which the overage occurred. This would have very similar economic impacts to the proposed application of AMs, except that the negative impacts would be delayed for 1 FY.

3. ACLs and AMs for YTF

The AM for the YTF sub-ACL, if the scallop fishery exceeds the sub-ACL, is a seasonal closure of areas that have been pre-identified to have high YTF bycatch rates. The applicable area will be closed in the subsequent FY for a specified period of time to only LA scallop vessels (LAGC vessels are exempt from the closure). This measure could increase fishing costs and have negative impacts on the scallop revenues and profits if the effort is moved to less productive areas with lower LPUE, or to areas with a predominance of smaller scallops with a lower price. Implementation of the closure in the subsequent FY, rather than in-season, prevents derby-style fishing and minimize the negative impacts on prices and revenues associated with it. Exempting LAGC trips from this AM prevents high distributional impacts for LAGC vessels that have a dependence on fishing within the proposed closure areas in SNE waters.

The alternative that would close an entire YTF stock area would have greater negative impacts on scallop revenues and profits compared to adopted measures. The alternatives that would institute either a fleet maximum DAS or an individual maximum number of DAS that could be used in a stock area for year 3 to account for an overage of the YTF sub-ACL in year 1 could reduce the negative impacts on scallop revenues, costs, and total economic benefits by preventing derby fishing and allowing more time for the scallop fleet to make adjustments for exceeding the YTF ACLs. However, it would apply penalties to the whole fleet for overages that may have been caused by only a part of the fleet. In addition, these options could increase the administration costs by making it necessary to monitor DAS-used by YTF stock areas, which would require additional reporting and recordkeeping requirements.

4. Measures To Adjust the OFD

The adoption of the hybrid OFD could result in a reduction in revenues and profits compared to no action alternative in the short to medium term. During the first 10 yr of implementation, average scallop revenue per vessel net of trips costs are expected to decline by about 5.8 percent. The hybrid OFD is expected have positive economic impacts over the long term, however, since this definition will provide more flexibility to meet the area rotation objectives and is expected to increase catch by 10 percent, with larger average scallop size. In addition, this alternative could potentially reduce area swept, thus reducing adverse effects on bycatch, seabed habitats, and EFH, with indirect positive impacts on the scallop fishery. For example, a reduction in bycatch prevents triggering YTF AM measures, and the negative impacts on scallop landings and revenues associated with such a measure. This

could offset some of the short-term potentially negative economic impacts from the hybrid OFD.

The status quo OFD is estimated to result in higher revenues and profits in the short-term compared to the hybrid OFD. However, this alternative was not selected by the Council because it is not consistent with the spatial management of the scallop fishery, has higher risks for the scallop resource, and lower economic benefits for the scallop fishery over the long-term compared to the hybrid OFD.

5. IFQ Carryover

The IFQ carryover provision allows LAGC IFQ vessels to carry up to 15 percent of a vessel's IFQ, including leased IFQ, to the following FY, if the vessel has unused IFQ at the end of the FY. This provides flexibility and safety-at-sea benefits in the case of unforeseen circumstances or bad weather that prevents the vessel from using all of its IFQ. As a result, this provides opportunity for vessels to land their unused IFQ in the next FY, with positive economic impacts for vessels, the LAGC fishery, and overall scallop revenue and profits.

The no action alternative has smaller economic benefits compared to the adopted carryover provision because it would not allow IFQ to be carried over into the subsequent FY. The Council also considered allowing a vessel's entire IFQ to be carried over, which would have provided higher immediate economic benefits than the adopted carryover provision. However, transferring a larger portion, or the entire amount of the unused IFQ could increase management uncertainty, which could result in application of an ACT, set below the ACL, to serve as a buffer to protect against the uncertainty. This overall reduction for the following FY would have negative impacts on the IFQ allocations and economic benefits in future years.

6. Modification of the LAGC IFQ Vessel Possession Limit

An increase in the LAGC IFQ possession limit from 400 lb (181.4 kg) to 600 lb (272.2 kg) is expected to reduce the fishing time and trip costs, because it is expected to increase trip efficiency and reduce steaming time over the course of the FY. In addition, it could increase profits for these vessels or offset the cost of elevated fuel prices. As a result, the 600-lb (272.2-kg) possession limit is expected have positive economic impacts on the scallop fishery compared to the no action alternative.

Alternatives to the proposed action included eliminating the possession limit and increasing it to 1,000 lb (454 kg) per trip. These alternatives produce higher benefits than the proposed option by maximizing trip revenue compared to fishing costs. However, these alternatives could change the nature of the LAGC IFQ fishery from a small-scale fishery to a full-time operation like the LA fishery, which would run counter to the FMP's objective of preserving the small-scale nature of the fishery for the LAGC IFQ fleet. It may result in consolidation that would eliminate operations with smaller IFQs or that have less total share of the IFQ fishery. These alternatives were not selected because the Council continues to support the LAGC IFQ fishery as a small-vessel fishery, consistent with its goals and vision for the fishery as developed under Amendment 11 to the FMP.

7. Increase in the Maximum IFQ per Vessel

Changing the 2-percent maximum quota per vessel to 2.5 percent provides more flexibility to vessels to adjust their harvest levels to changes in the scallop resource conditions. In addition, since a vessel owner could meet the 5-percent ownership cap by owning only two vessels, it eliminates ownership costs associated with multiple vessels. The increase to a 2.5-percent cap, therefore, has positive impacts on profitability. The no action alternative for increasing the maximum IFQ per vessel would not improve flexibility and would have negative economic impacts associated with costs of vessel ownership compared to the proposed action.

8. Allowing LAGC Quota To Be Split From IFQ Permits

Allowing the IFQ to be split from the IFQ permit improves flexibility and facilitates movement of quota between fishermen. It also increases the likelihood that all IFQ will be harvested, thereby reducing management uncertainty. It allows fishermen to combine their allocations and to benefit from an economically viable operation when the allocations of some vessels are too small to make scallop fishing profitable. This measure is therefore likely to have positive impacts on revenues and profits for the participants of the IFQ fishery.

The Council rejected an alternative that would have allowed quota to be transferred between the LA/IFQ fleet and IFQ-only fleet. This alternative would have resulted in larger economic benefits for LAGC IFQ vessels because it would provide another source of IFQ. However, this option was not chosen by the Council mostly due to concerns about the difficulty of monitoring mixed quota from the two categories, since they are allocated quota from two separate pools.

Under the no action alternative, LAGC IFQ vessels that want to permanently transfer quota have to purchase LAGC IFQ permit as well as all the other permits a vessel has, which makes purchasing of LAGC IFQ very expensive. It also is a deterrent to engaging in permanent transfers, since some owners would prefer to retain the permits for other fisheries. The no action alternative, therefore, would have reduced benefits compared to the adopted measure.

9. Measures To Address EFH Closed Areas

This action modifies the EFH areas closed to scallop gear under Scallop Amendment 10 to be consistent with NE Multispecies Amendment 13, and eliminate the areas closed for EFH under Amendment 10. As a result, effort could be allocated to CAI (where the scallops are larger and yield is higher), instead of allocating more open area effort in areas with potentially lower catch rates. This is expected to have positive impacts on the scallop resource and future yield, and to increase the scallop revenues by about $8 million (assuming a price of $7.00 per lb) per year. Fishing in more productive areas is also expected to reduce the fishing costs. Therefore, the revised EFH closed areas are expected to have positive impacts on revenues and profits from the scallop fishery. The Council considered taking no action, but such action would have lower economic benefits than the proposed action, since it would not provide access to portions of the scallop resource that would improve yield and reduce fishing costs.

10. Measures To Improve RSA Program

These measures are expected to have positive indirect economic benefits for the sea scallop fishery by improving the timing and administration of the RSA program. Having dedicated resources for funding research to survey access areas will improve the Council's ability to allocate the appropriate amount of effort to prevent overfishing and optimize yield. Exempting RSA projects (if identified in the proposal) from crew restrictions, the seasonal closure in Elephant Trunk, and the requirement to return to port if fishing in more than one area will allow more flexibility and more effective research. If, as a result of these measures, the program can be more streamlined, and worthwhile

projects can occur with fewer obstacles, better and timelier research will result in indirect benefits on the scallop resource and yield and will increase economic benefits from the scallop fishery. Several alternatives were considered by the Council, but they all would have similar impacts. Therefore, the adopted Scallop RSA Program revisions are based on policy decisions that reflect the most efficient and effective way of implementing the RSA Program.

11. Third-Year Default Measures in the Framework Adjustment Process and Addition to the List of Frameworkable Items in the FMP

A third year of specifications will be established through the framework adjustment process in order to prevent outdated measures from being implemented due to the delay in the implementation of the 2-yr framework actions. It serves as a safety mechanism to prevent against management measure rollovers during implementation delays. These rollover measures complicate management of the scallop fishery, do not make sense for the industry, and may cause undesired negative effects or require further management intervention. Therefore, including third-year specifications alleviates some of the implementation issues caused by the time lag between the FY and the time when the survey data become available. Since the measures that are created for year 3 will result in landings more consistent with the updated scallop biomass estimates and PDT recommendations, this action is expected to have positive indirect effects on the participants of the scallop fishery. There are no other alternatives that would result in larger economic benefits.

Expanding the list of frame workable items allows the Council to more easily adjust the allocations according to the resource conditions and as needed in terms of research priorities or to make further changes to benefit EFH. As a result, these measures are expected to have positive impacts on the scallop fishery and its participants. There are no other alternatives that would result in larger economic benefits.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic scallop fishery. In addition, copies of this final rule and guide (*i.e.,* permit holder letter) are available from the Regional Administrator and are also available from NMFS, Northeast Region (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 14, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.4, paragraphs (a)(2)(i) introductory text, and (a)(2)(ii)(A) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(2) * * *

(i) *Limited access scallop permits.* Any vessel of the United States that possesses or lands more than 600 lb (272.2 kg) of shucked scallops, or 50 bu (17.6 hL) of in-shell scallops per trip South of 42°20′ N. Lat., or 75 bu (26.4 hL) of in-shell scallops per trip North of 42°20′ N. Lat, or possesses more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid limited access scallop permit.

* * * * *

(ii) * * *

(A) *Individual fishing quota LAGC permit.* To possess or land up to 600 lb (272.2 kg) of shucked meats, or land up to 75 bu (26.4 hL) of in-shell scallops per trip, or possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS demarcation line, a vessel must have been issued an individual fishing quota LAGC scallop permit (IFQ scallop permit). Issuance of an initial IFQ scallop permit is contingent upon the vessel owner submitting the required application and other information that demonstrates that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(D) of this section.

* * * * *

■ 3. In § 648.10, paragraphs (e)(5)(i), (e)(5)(ii), (f)(4)(i), and (h)(8) are revised to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(e) * * *

(5) * * *

(i) A vessel subject to the VMS requirements of § 648.9 and paragraphs (b) through (d) of this section that has crossed the VMS Demarcation Line under paragraph (a) of this section is deemed to be fishing under the DAS program, the LAGC IFQ or NGOM scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period. NMFS must be notified by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

(ii) Notification that the vessel is not under the DAS program, the LAGC IFQ or NGOM scallop fishery, or any other fishery requiring the operation of VMS, must be received by NMFS prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

* * * * *

(f) * * *

(4) * * *

(i) The owner or operator of a limited access or LAGC IFQ vessel that fishes for, possesses, or retains scallops, and is not fishing under a NE Multispecies DAS or sector allocation, must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished, including open area trips, access area trips as described in § 648.60(a)(9), and trips accompanied by a NMFS-approved observer. The reports must be submitted for each day (beginning at 0000 hr and ending at 2400 hr) and not later than 0900 hours of the following day. Such reports must include the following information:

(A) FVTR serial number;

(B) Date fish were caught;

(C) Total pounds of scallop meats kept;

(D) Total pounds of yellowtail flounder kept;

(E) Total pounds of yellowtail flounder discarded; and

(F) Total pounds of all other fish kept.

* * * * *

(h) * * *

(8) Any vessel issued a limited access scallop permit and not issued an LAGC scallop permit that possesses or lands scallops; any vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops; any vessel issued a limited access scallop and LAGC NGOM scallop permit that possesses or lands more than 200 lb (90.7 kg) of scallops; any vessel issued a limited access scallop and LAGC IC scallop permit that possesses or lands more than 40 lb (18.1 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(h)(9)(ii), 648.17, and 648.89; any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in § 648.94(c); and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1) shall be deemed to be in its respective DAS program for purposes of counting DAS and will be charged DAS from its time of sailing to landing, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (e) through (h) of this section.

* * * * *

■ 4. In § 648.11, paragraphs (g)(1) and (g)(2)(ii) are revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(g) * * *

(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (b) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and LAGC IFQ vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

(2) * * *

(ii) *LAGC IFQ vessels.* LAGC IFQ vessel owners, operators, or managers must notify the NMFS/NEFOP by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start a scallop trip in an access area. If selected, up to two Sea Scallop Access Area trips that start during the specified week (Sunday through Saturday) can be selected to be covered by an observer. NMFS/NEFOP must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure.

* * * * *

■ 5. In § 648.14, paragraphs (i)(1)(ii), (i)(1)(iii)(A)(*1*)(*iii*), (i)(1)(iii)(A)(*2*)(*iii*), (i)(1)(iii)(A)(*3*) introductory text, (i)(4)(i)(A), (i)(4)(ii)(B), and (i)(4)(iii)(B) are revised; paragraph (i)(2)(viii) is added; and paragraph (i)(3)(iii)(E) is removed as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(ii) *Gear and crew requirements.* Have a shucking or sorting machine on board a vessel while in possession of more than 600 lb (272.2 kg) of shucked scallops, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(iii) * * *

(A) * * *

(*1*) * * *

(*iii*) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit and is properly declared into the IFQ scallop fishery or is properly declared into the NE multispecies or Atlantic surfclam or quahog fishery and is not fishing in a sea scallop access area.

* * * * *

(*2*) * * *

(*iii*) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii)(A), is fishing outside of the NGOM scallop management area, and is properly declared into the general category scallop fishery or is properly declared into the NE multispecies or Atlantic surfclam or quahog fishery and is not fishing in a sea scallop access area.

* * * * *

(*3*) In excess of 600 lb (272.2 kg) of shucked scallops at any time, 50 bu (17.6 hL) of in-shell scallops per trip South of 42°20′ N. Lat. and shoreward of the VMS Demarcation Line, or 75 bu (26.4 hL) of in-shell scallops per trip North of 42°20′ N. Lat and shoreward of the VMS demarcation line, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless:

* * * * *

(2) * * *

(viii) Fish for scallops in, or possess scallops or land scallops from, the yellowtail flounder accountability measure closed areas specified in § 648.64 during the period specified in the notice announcing the closure and based on the closure table specified in § 648.64.

* * * * *

(4) * * *

(i) * * *

(A) Fish for or land per trip, or possess at any time, in excess of 600 lb (272.2 kg) of shucked, or 75 bu (26.4 hL) of in-shell scallops per trip, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless the vessel is carrying an observer as specified in § 648.11 while participating in the Area Access Program specified in § 648.60 and an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.60(d)(2).

* * * * *

(ii) * * *

(B) Have an IFQ allocation on an IFQ scallop vessel of more than 2.5 percent of the total IFQ scallop ACL as specified in § 648.53(a)(4)(i).

* * * * *

(iii) * * *

(B) Apply for an IFQ transfer that will result in the receiving vessel having an IFQ allocation in excess of 2.5 percent of the total IFQ scallop ACL as specified in § 648.53(a)(4)(i).

* * * * *

■ 6. In § 648.51, paragraphs (d)(1) and (e) introductory text are revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(d) * * *

(1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program, or any vessel in possession of more than 600 lb (272.2 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

* * * * *

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or Occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such request may be placed in the appropriate higher category for the entire year, if they agree to comply with the following restrictions, in addition to, and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53:

* * * * *

■ 7. In § 648.52, paragraph (a) is revised to read as follows:

§ 648.52 Possession and landing limits.

(a) A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery as specified in § 648.10(b), or on a properly declared NE multispecies, surfclam, or ocean quahog trip and not fishing in a scallop access area, unless as specified in paragraph (g) of this section or exempted under the state waters exemption program described in § 648.54, may not possess or land, per trip, more than 600 lb (272.2 kg) of shucked scallops, or possess more than 75 bu (26.4 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared IFQ scallop trip, or on a properly declared NE multispecies, surfclam, or ocean quahog trip and not fishing in a scallop access area.

* * * * *

■ 8. In § 648.53,

■ a. The section heading is revised;

■ b. Paragraphs (a), (b)(1), (b)(4) introductory text, (c), (d), (g), (h)(2)(iii), (h)(3)(i)(A), (h)(3)(i)(B), (h)(3)(i)(C), (h)(3)(ii)(A), (h)(4) introductory text, (h)(5)(ii), (h)(5)(iii), and (h)(5)(iv) are revised;

■ c. Paragraphs (b) introductory text, (b)(4)(ii), (h)(2)(v), and (h)(2)(vi) are added;

■ d. Paragraphs (a)(5), (a)(6), and (a)(9), (b)(2), and (b)(4)(i) are removed and reserved.

The revisions and additions read as follows:

§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas.

(a) *Scallop fishery ABC.* The ABC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55 and is equal to the overall scallop fishery ACL. The ABC/ACL shall be divided as sub-ACLs between limited access vessels, limited access vessels that are fishing under a limited access general category permit, and limited access general category vessels as specified in paragraphs (a)(3) and (a)(4) of this section, after deducting the scallop incidental catch target TAC specified in paragraph (a)(2) of this section, observer set-aside specified in paragraph (g)(1) of this section, and research set-aside specified in § 648.56(d).

(1) ABC/ACL for fishing years 2011 through 2013 shall be:

(i) *2011.* To be determined.

(ii) *2012.* To be determined.

(iii) *2013.* To be determined.

(2) *Scallop incidental catch target TAC.* The incidental catch target TAC for vessels with incidental catch scallop permits is to be determined for fishing years 2011, 2012, and 2013.

(3) *Limited access fleet sub-ACL and ACT.* The limited access scallop fishery shall be allocated 94.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). ACT for the limited access scallop fishery shall be established through the framework adjustment process described in § 648.55. DAS specified in paragraph (b) of this section shall be based on the ACTs specified in paragraph (a)(3)(ii) of this section.

(i) The limited access fishery sub-ACLs for the 2011 through 2013 fishing years are:

(A) *2011.* To be determined.

(B) *2012.* To be determined.

(C) *2013.* To be determined.

(ii) The limited access fishery ACTs for the 2011 through 2013 fishing years are:

(A) *2011.* To be determined.

(B) *2012.* To be determined.

(C) *2013.* To be determined.

(4) *LAGC fleet sub-ACL.* The sub-ACL for the LAGC IFQ fishery shall be equal to 5.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC IFQ fishery ACT shall be equal to the LAGC IFQ fishery's ACL. The ACL for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The ACL for the LAGC IFQ fishery for vessels issued both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a).

(i) The ACLs for the 2011 through 2013 fishing years for LAGC IFQ vessels without a limited access scallop permit are:

(A) *2011.* To be determined.

(B) *2012.* To be determined.

(C) *2013.* To be determined.

(ii) The ACLs for the 2011 through 2013 fishing years for vessels issued both a LAGC and a limited access scallop permit are:

(A) *2011.* To be determined.

(B) *2012.* To be determined.

(C) *2013.* To be determined.

(b) *DAS allocations.* DAS allocations for limited access scallop trips in all areas other than those specified in § 648.59 shall be specified through the framework adjustment process, as specified in § 648.55, using the ACT specified in paragraph (a)(3)(ii) of this section. A vessel's DAS, shall be determined and specified in paragraph (b)(4) of this section by dividing the total DAS specified in the framework adjustment by the LPUE specified in paragraph (b)(1) of this section, then dividing by the total number of vessels in the fleet.

(1) *Landings per unit effort (LPUE).* LPUE is an estimate of the average amount of scallops, in pounds, that the limited access scallop fleet lands per DAS fished. The estimated LPUE is the average LPUE for all limited access scallop vessels fishing under DAS, and shall be used to calculate DAS specified in paragraph (b)(4) of this section, the DAS reduction for the AM specified in paragraph (b)(4)(ii) of this section, and the observer set-aside DAS allocation specified in paragraph (g)(1) of this section. LPUE shall be:

(i) *2011.* To be determined.

(ii) *2012.* To be determined.

(iii) *2013.* To be determined.

* * * * *

(4) Each vessel qualifying for one of the three DAS categories specified in the

table in this paragraph (b)(4) (full-time, part-time, or occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category, excluding carryover DAS in accordance with paragraph (d) of this section. DAS allocations shall be determined by distributing the portion of ACT specified in paragraph (a)(3)(ii), as reduced by access area allocations, as specified in § 648.59, and dividing that among vessels in the form of DAS calculated by applying estimates of open area LPUE specified in paragraph (b)(1) of this section. Part-time and occasional scallop vessels shall be equal to 40 percent and 8.33 percent of the full-time DAS allocations, respectively. The annual open area DAS allocations for each category of vessel for the fishing years indicated are as follows:

DAS category	2010
Full-time	38
Part-time	15
Occasional	3

* * * * *

(ii) *Accountability measures (AM).* Unless the limited access AM exception is implemented in accordance with the provision specified in paragraph (b)(4)(iii) of this section, if the ACL specified in paragraph (a)(3)(i) of this section is exceeded for the applicable fishing year, the DAS specified in paragraph (b)(4) of this section for each limited access vessel shall be reduced by an amount equal to the amount of landings in excess of the ACL divided by the applicable LPUE for the fishing year in which the AM will apply as specified in paragraph (b)(1) of this section, then divided by the number of scallop vessels eligible to be issued a full-time limited access scallop permit. For example, assuming a 300,000-lb (136-mt) overage of the ACL in 2011, an open area LPUE of 2,500 lb (1.13 mt) per DAS in 2012, and 313 full-time vessels, each full time vessel's DAS would be reduced by 0.38 DAS (300,000 lb (136 mt)/2,500 lb (1.13 mt) per DAS = 120 lb (0.05 mt) per DAS/313 vessels = 0.38 DAS per vessel). Deductions for part-time and occasional scallop vessels shall be equal to 40 percent and 8 percent of the full-time DAS deduction, respectively, as calculated pursuant to this paragraph (b)(4)(ii). The AM shall take effect in the fishing year following the fishing year in which the overage occurred. For example, landings in excess of the ACL in fishing year 2011 would result in the DAS reduction AM in fishing year 2012. If the AM takes effect, and a limited access vessel uses more open area DAS in the fishing year in which the AM is applied, the vessel shall have the DAS used in excess of the allocation after applying the AM deducted from its open area DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in 2011 uses all 32 DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in 2012 would be reduced by 1 DAS.

(iii) *Limited access AM exception*—If it is determined by NMFS in accordance with paragraph (b)(4)(ii) of this section, that the fishing mortality rate associated with total scallop landings in a fishing year is less than 0.28, the AM specified in paragraph (b)(4)(ii) of this section shall not take effect. The fishing mortality rate of 0.28 is the fishing mortality that is one standard deviation below the fishing mortality rate for the scallop fishery ACL (*i.e.,* ABC), currently estimated at 0.32.

(iv) *Limited access fleet AM and exception provision timing.* The Regional Administrator shall determine whether the limited access fleet exceeded its ACL specified in paragraph (a)(3)(i) of this section by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council (Council) of the determination of whether or not the ACL for the limited access fleet was exceeded, and the amount of landings in excess of the ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total scallop landings is less than 0.28. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

* * * * *

(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 3 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS before the beginning of the third year of each biennial adjustment, the third-year measures specified in the biennial framework adjustment shall remain in effect for the next fishing year. If a new biennial or other framework adjustment is not implemented by NMFS by the conclusion of the third year, the management measures from that third year would remain in place until a new action is implemented. The Council may also recommend adjustments to DAS allocations or other measures through a framework adjustment at any time.

(d) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. Carry-over DAS are accounted for in setting the ACT for the limited access fleet, as specified in paragraph (a)(3)(ii) of this section. Therefore, if carry-over DAS result or contribute to an overage of the ACL, the limited access fleet AM specified in paragraph (b)(4)(ii) of this section would still apply, provided the AM exception specified in paragraph (b)(4)(iii) of this section is not invoked.

* * * * *

(g) *Set-asides for observer coverage.* (1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL specified in paragraph (a)(1) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. The total TAC for observer set aside is 273 mt in fishing year 2011, 289 mt in fishing year 2012, and 287 mt in fishing year 2013. This 1 percent is divided proportionally into access areas and open areas, as specified in § 648.60(d)(1) and (g)(2) of this paragraph, respectively.

(2) *DAS set-aside for observer coverage.* For vessels assigned to take an at-sea observer on a trip other than an Access Area Program trip, the open-area observer set-aside TACs are 139 mt, 161 mt, and 136 mt for fishing years 2011, 2012, and 2013, respectively. The DAS set-aside shall be determined by dividing these amounts by the LPUE specified in paragraph (b)(1)(i) of this

section for each specific fishing year. The DAS set-aside for observer coverage is 137 DAS for the 2011 fishing year, 133 DAS for the 2012 fishing year, and 112 DAS for the 2013 fishing year. A vessel carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate, based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. This DAS adjustment factor may also be changed during the fishing year if fishery conditions warrant such a change. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived if set-aside is not available.

(h) * * *

(2) * * *

(iii) *Contribution percentage.* A vessel's contribution percentage shall be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued an IFQ scallop permit. Continuing the example in paragraph (h)(1)(ii)(D) of this section, the sum of the contribution factors for 380 IFQ scallop vessels is estimated, for the purpose of this example, to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel is 1.45 percent (60,687 lb (27,527 kg)/4.18 million lb (1,896 mt) = 1.45 percent). The contribution percentage for a vessel that is issued an IFQ scallop permit and that has permanently transferred all of its IFQ to another IFQ vessel, as specified in paragraph (h)(5)(ii) of this section, shall be equal to 0 percent.

* * * * *

(v) *End-of-year carry-over for IFQ.* (A) With the exception of vessels that held a confirmation of permit history as described in § 648.4(a)(2)(ii)(L) for the entire fishing year preceding the carry-over year, LAGC IFQ vessels that have unused IFQ on the last day of February of any year may carry over up to 15 percent of the vessel's original IFQ and transferred (either temporary or permanent) IFQ into the next fishing year. For example, a vessel with a 10,000-lb (4,536-kg) IFQ and 5,000-lb (2,268-kg) leased IFQ may carry over 2,250 lb (1,020 kg) of IFQ (*i.e.*, 15 percent of 15,000 lb (6,804 kg) into the next fishing year if it landed 12,750 lb (5,783 kg) (*i.e.*, 85 percent of 15,000 lb (6,804 kg) of scallops or less in the preceding fishing year. Using the same IFQ values from the example, if the vessel landed 14,000 lb (6,350 kg) of scallops, it could carry over 1,000 lb (454 kg) of scallops into the next fishing year.

(B) For accounting purposes, the combined total of all vessels' IFQ carry-over shall be added to the LAGC IFQ fleet's applicable ACL for the carry-over year. Any IFQ carried over that is landed in the carry-over fishing year shall be counted against the ACL specified in paragraph (a)(4)(i) of this section, as increased by the total carry-over for all LAGC IFQ vessels, as specified in this paragraph (h)(2)(v)(B). IFQ carry-over shall not be applicable to the calculation of the IFQ cap specified in paragraph (h)(3)(i) of this section and the ownership cap specified in paragraph (h)(3)(ii) of this section.

(vi) *AM for the IFQ fleet.* If a vessel exceeds its IFQ, including all temporarily and permanently transferred IFQ, in a fishing year, the amount of landings in excess of the vessel's IFQ, including all temporarily and permanently transferred IFQ, shall be deducted from the vessel's IFQ as soon as possible in the fishing year following the fishing year in which the vessel exceeded its IFQ. If the AM takes effect, and an IFQ vessel lands more scallops than allocated after the AM is applied, the vessel shall have the IFQ landed in excess of its IFQ after applying the AM deducted from its IFQ in the subsequent fishing year. For example, a vessel with an initial IFQ of 1,000 lb (453.6 kg) in 2010 landed 1,200 lb (544.3 kg) of scallops in 2010, and is initially allocated 1,300 lb (589.7 kg) of scallops in 2011. That vessel would be subject to an IFQ reduction equal to 200 lb (90.7 kg) to account for the 200 lb (90.7 kg) overage in 2010. If that vessel lands 1,300 lb (589.7 kg) of scallops in 2011 prior to application of the 200-lb (90.7-kg) deduction, the vessel would be subject to a deduction of 200 lb (90.7 kg) in 2012. For vessels involved in a temporary IFQ transfer, the entire deduction shall apply to the vessel that acquired IFQ, not the transferring vessel. A vessel that has an overage that exceeds its IFQ in the subsequent fishing year shall be subject to an IFQ reduction in subsequent years until the overage is paid back. For example, a vessel with an IFQ of 1,000 lb (454 kg) in each year over a 3-year period, that harvests 2,500 lb (1,134 kg) of scallops the first year, would have a 1,500-lb (680-kg) IFQ deduction, so that it would have zero pounds to harvest in year 2, and 500 lb (227 kg) to harvest in year 3. A vessel that has a ''negative'' IFQ balance, as described in the example, could lease or transfer IFQ to balance the IFQ, provided there are no sanctions or other enforcement penalties that would prohibit the vessel from acquiring IFQ.

(3) * * *

(i) * * *

(A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraphs (a)(4)(i) and (iii) of this section.

(B) A vessel may be initially issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraphs (a)(4)(i) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraphs (a)(4)(i) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or that was issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(i)(A) of this section, is eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permit or confirmations of permit history will result in the 2.5-percent IFQ cap restriction being exceeded.

(ii) * * *

(A) For any vessel acquired after June 1, 2008, a vessel owner is not eligible to be issued an IFQ scallop permit for the vessel, and/or a confirmation of permit

history, and is not eligible to transfer IFQ to the vessel, if, as a result of the issuance of the permit and/or confirmation of permit history, or IFQ transfer, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in more than 5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraphs (a)(4)(i) of this section.

* * * * *

(4) *IFQ cost recovery.* A fee, not to exceed 3 percent of the ex-vessel value of IFQ scallops harvested, shall be collected to recover the costs associated with management, data collection, and enforcement of the IFQ program. The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in this paragraph (h) shall be responsible for paying the fee as specified by NMFS in this paragraph (h)(4). An IFQ scallop vessel shall incur a cost recovery fee liability for every landing of IFQ scallops. The IFQ scallop permit holder shall be responsible for collecting the fee for all of its vessels' IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year. The cost recovery fee for all landings, regardless of ownership changes throughout the fishing year, shall be the responsibility of the official owner of the vessel, as recorded in the vessel permit or confirmation of permit history file, at the time the bill is sent.

* * * * *

(5) * * *

(ii) *Permanent IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel. Any such transfer cannot be limited in duration and is permanent, unless the IFQ is subsequently transferred to another IFQ scallop vessel, other than the originating IFQ scallop vessel, in a subsequent fishing year. If a vessel permanently transfers its entire IFQ to another vessel, the LAGC IFQ scallop permit shall remain valid on the transferring vessel, unless the owner of the transferring vessel cancels the IFQ scallop permit. Such cancellation shall be considered voluntary relinquishment of the IFQ permit, and the vessel shall be ineligible for an IFQ scallop permit unless it replaces another vessel that was issued an IFQ scallop permit. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. IFQ can be transferred only once during a given fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the ACL allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

(iv) *Application for an IFQ transfer.* The owner of a vessel applying for a transfer of IFQ must submit a completed application form obtained from the Regional Administrator. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the scallop fishing year, provided the vessel transferring the IFQ to another vessel has not utilized any of its own IFQ in that fishing year. Applications for temporary transfers received less than 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ, if approved, prior to the expiration of the fishing year.

(A) *Application information requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or state registration number; transferee's name, vessel name, permit number, and official number or state registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be less than 100 lb (45 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery.

(B) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 30 days of receipt of an application.

(C) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's vessel has fished under its IFQ prior to the completion of the transfer request; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to a final administrative decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2.5 percent of the ACL allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of or interest in general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels; or any other failure to meet the requirements of the regulations in 50 CFR 648. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision by the Regional Administrator is the final agency decision, and there is no opportunity to appeal the Regional Administrator's decision. An application that was denied can be resubmitted if the discrepancy(ies) that resulted in denial are resolved.

■ 9. Section 648.55 is revised to read as follows:

§ 648.55 Framework adjustments to management measures.

(a) At least biennially, the Council shall assess the status of the scallop resource, determine the adequacy of the management measures to achieve scallop resource conservation objectives, and initiate a framework adjustment to establish scallop fishery management measures for the 2-year period beginning with the scallop fishing year immediately following the year in which the action is initiated. The PDT shall prepare a Stock Assessment and Fishery Evaluation

(SAFE) Report that provides the information and analysis needed to evaluate potential management adjustments. The framework adjustment shall establish OFL, ABC, ACL, ACT, DAS allocations, rotational area management programs, percentage allocations for limited access general category vessels in Sea Scallop Access Areas, scallop possession limits, AMs, and other measures to achieve FMP objectives and limit fishing mortality. The Council's development of rotational area management adjustments shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria. Rotational closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas should be considered for Sea Scallop Access Areas where the projected annual change in scallop biomass is less than 15 percent.

(b) The preparation of the SAFE Report shall begin on or about June 1 of the year preceding the fishing year in which measures will be adjusted.

(c) *OFL, ABC, ACL, ACT, and AMs.* The Council shall specify OFL, ABC, ACL, ACT, and AMs, as applicable, for each year covered under the biennial or other framework adjustment.

(1) *OFL.* OFL shall be based on an updated scallop resource and fishery assessment provided by either the Scallop PDT or a formal stock assessment. OFL shall include all sources of scallop mortality and shall include an upward adjustment to account for catch of scallops in state waters by vessels not issued Federal scallop permits. The fishing mortality rate (F) associated with OFL shall be the threshold F, above which, overfishing is occurring in the scallop fishery. The F associated with OFL shall be used to derive specifications for ABC, ACL, and ACT, as specified in paragraphs (a)(2) through (5) of this section.

(2) The specification of ABC, ACL, and ACT shall be based upon the following overfishing definition: The F shall be set so that in access areas, averaged for all years combined over the period of time that the area is closed and open to scallop fishing as an access area, it does not exceed the established F threshold for the scallop fishery; in open areas it shall not exceed the F threshold for the scallop fishery; and for access and open areas combined, it is set at a level that has a 75-percent probability of remaining below the F associated with ABC, as specified in paragraph (c)(2) of this section, taking into account all sources of fishing mortality in the limited access and LAGC fleets of the scallop fishery.

(3) *ABC.* The Council shall specify ABC for each year covered under the biennial or other framework adjustment. ABC shall be the catch that has an associated F that has a 75-percent probability of remaining below the F associated with OFL. ABC shall be equal to ACL for the scallop fishery.

(4) *Deductions from ABC.* Incidental catch, equal to the value established in § 648.53(a)(2), shall be removed from ABC/ACL. One percent of ABC/ACL shall be removed from ABC/ACL for observer set-aside. Scallop catch equal to the value specified in § 648.56(d) shall be removed from ABC/ACL for research set-aside. These deductions for incidental catch, observer set-aside, and research set-aside, shall be made prior to establishing ACLs for the limited access and LAGC fleets, as specified in paragraph (c)(4) of this section.

(5) *Sub-ACLs for the limited access and LAGC fleets.* The Council shall specify sub-ACLs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL equal to 94.5 percent of the ABC/ACL shall be allocated to the limited access fleet. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL of 5.5 percent of ABC/ACL shall be allocated to the LAGC fleet, so that 5 percent of ABC/ACL is allocated to the LAGC fleet of vessels that do not also have a limited access scallop permit, and 0.5 percent of the ABC/ACL is allocated to the LAGC fleet of vessels that have limited access scallop permits. This specification of sub-ACLs shall not account for catch reductions associated with the application of AMs or adjustment of the sub-ACL as a result of the disclaimer provision as specified in § 648.53(b)(4)(iii).

(6) *ACT for the limited access and LAGC fleets.* The Council shall specify ACTs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. The ACT for the limited access fishery shall be set at a level that has an associated F with a 75-percent probability of remaining below the F associated with ABC/ACL. The LAGC ACT shall be set equal to the LAGC sub-ACL as specified in paragraph (a)(5) of this section.

(7) *AMs.* The Council shall specify AMs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. For the limited access scallop fleet, AMs result in a DAS reduction for each limited access scallop vessel as specified in § 648.53(b)(4)(ii). For the LAGC scallop fleet, AMs result in an IFQ deduction for each vessel issued a LAGC scallop permit as specified in § 648.53(h)(2)(vi).

(d) *Yellowtail flounder sub-ACL.* The Council shall specify the yellowtail flounder sub-ACL allocated to the scallop fishery through the framework adjustment process specified in § 648.90.

(e) *Third-year default management measures.* The biennial framework action shall include default management measures that shall be effective in the third year unless replaced by the measures included in the next biennial framework action. If the biennial framework action is not published in the **Federal Register** with an effective date on or before March 1, in accordance with the Administrative Procedure Act, the third-year measures shall be effective beginning March 1 of each fishing year until the framework adjustment is implemented, or for the entire fishing year if the framework adjustment is completed or is not implemented by NMFS for the third year. The framework action shall specify the measures necessary to address inconsistencies between specifications and allocations for the period after March 1 but before the framework adjustment is implemented for that year. In the case of third-year measures of a biennial adjustment being implemented, if no framework adjustment has been implemented by March 1 of the following year, the measures from the preceding year shall continue to be in effect until replaced by subsequent action.

(f) After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice of the availability of

both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must include measures to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis, and must come from one or more of the following categories:

(1) Total allowable catch and DAS changes;

(2) Shell height;

(3) Offloading window reinstatement;

(4) Effort monitoring;

(5) Data reporting;

(6) Trip limits;

(7) Gear restrictions;

(8) Permitting restrictions;

(9) Crew limits;

(10) Small mesh line;

(11) Onboard observers;

(12) Modifications to the overfishing definition;

(13) VMS Demarcation Line for DAS monitoring;

(14) DAS allocations by gear type;

(15) Temporary leasing of scallop DAS requiring full public hearings;

(16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch;

(17) Aquaculture enhancement measures and closures;

(18) Closed areas to increase the size of scallops caught;

(19) Modifications to the opening dates of closed areas;

(20) Size and configuration of rotational management areas;

(21) Controlled access seasons to minimize bycatch and maximize yield;

(22) Area-specific trip allocations;

(23) TAC specifications and seasons following re-opening;

(24) Limits on number of area closures;

(25) Set-asides for funding research;

(26) Priorities for scallop-related research that is funded by research TAC set-aside;

(27) Finfish TACs for controlled access areas;

(28) Finfish possession limits;

(29) Sea sampling frequency;

(30) Area-specific gear limits and specifications;

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;

(32) Specifications for IFQs for limited access general category vessels;

(33) Revisions to the cost recovery program for IFQs;

(34) Development of general category fishing industry sectors and fishing cooperatives;

(35) Adjustments to the Northern Gulf of Maine scallop fishery measures;

(36) VMS requirements;

(37) Increases or decreases in the LAGC possession limit;

(38) Adjustments to aspects of ACL management;

(39) Adjusting EFH closed area management boundaries or other associated measures; and

(40) Any other management measures currently included in the FMP.

(g) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this section to address gear conflict as defined under § 600.10 of this chapter. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2,700 mi^2 (6,993 km^2), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Administrator. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

(1) Monitoring of a radio channel by fishing vessels;

(2) Fixed-gear location reporting and plotting requirements;

(3) Standards of operation when gear conflict occurs;

(4) Fixed-gear marking and setting practices;

(5) Gear restrictions for specific areas (including time and area closures);

(6) VMS;

(7) Restrictions on the maximum number of fishing vessels or amount of gear; and

(8) Special permitting conditions.

(h) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(i) Unless otherwise specified, after developing a framework adjustment and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to publish the framework adjustment as a final rule. If the Council recommends that the framework adjustment should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry, consistent with the Administrative Procedure Act, in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(j) If the Council's recommendation includes adjustments or additions to management measures, and if, after reviewing the Council's recommendation and supporting information:

(1) The Regional Administrator approves the Council's recommended management measures, the Secretary may, for good cause found pursuant to the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in doing so, shall publish only the final rule. Submission of a recommendation by the Council for a

final rule does not affect the Secretary's responsibility to comply with the Administrative Procedure Act; or

(2) The Regional Administrator approves the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action shall be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Council recommendation, the action shall be published as a final rule in the **Federal Register**; or

(3) The Regional Administrator does not concur, the Council shall be notified, in writing, of the reasons for the non-concurrence.

(k) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

■ 10. Section 648.56 is revised to read as follows:

§ 648.56 Scallop research.

(a) At least biennially, in association with the biennial framework process, the Council and NMFS shall prepare and issue an announcement of Federal Funding Opportunity (FFO) that identifies research priorities for projects to be conducted by vessels using research set-aside as specified in paragraph (d) of this section and § 648.60(e), provides requirements and instructions for applying for funding of a proposed RSA project, and specifies the date by which applications must be received. The FFO shall be published as soon as possible by NMFS and shall provide the opportunity for applicants to apply for projects to be awarded for 1 or 2 years by allowing applicants to apply for RSA funding for the first year, second year, or both.

(b) Proposals submitted in response to the FFO must include the following information, as well as any other specific information required within the FFO: A project summary that includes the project goals and objectives, the relationship of the proposed research to scallop research priorities and/or management needs, project design, participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NOAA shall make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits, or take additional trips into Open or Access Areas. NMFS shall provide authorization of such activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(d) Available RSA allocation shall be 1.25 million lb (567 mt) annually, which shall be deducted from the ABC/ACL specified in § 648.53(a) prior to setting ACLs for the limited access and LAGC fleets, as specified in § 648.53(a)(3)(i) and (a)(4)(i), respectively. Approved RSA projects shall be allocated an amount of scallop pounds that can be harvested in open areas and available access areas. The specific access areas that are open to RSA harvest shall be specified through the framework process and identified in § 648.60(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop pounds needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas.

(e) If all RSA TAC is not allocated in a fishing year, and proceeds from compensation fishing for approved projects fall short of funds needed to cover a project's budget due to a lower-than-expected scallop price, unused RSA allocation can be provided to that year's awarded projects to compensate for the funding shortfall, or to expand a project, rather than having that RSA go unused. NMFS shall identify the process for the reallocation of available RSA pounds as part of the FFO for the RSA program. The FFO shall specify the conditions under which a project that has been awarded RSA could be provided additional RSA pounds as supplemental compensation to account for lower-than-expected scallop price or for expansion of the project, timing of reallocation, and information submission requirements.

(f) If all RSA pounds awarded to a project cannot be harvested during the applicable fishing year, RSA TAC awarded to that project may be harvested through May 31 of the fishing year subsequent to the fishing year in which the set-aside is awarded.

(g) Vessels conducting research under an approved RSA project may be exempt from crew restrictions specified in § 648.51, seasonal closures of access areas specified in § 648.59, and the restriction on fishing in only one access area during a trip specified in § 648.60(a)(4). The RSA project proposal must list which of these measures for which an exemption is required. An exemption shall be provided by Letter of Authorization issued by the Regional Administrator. RSA compensation fishing trips and combined compensation and research trips are not eligible for these exemptions.

(h) Upon completion of scallop research projects approved pursuant to this section and the applicable NOAA grants review process, researchers must provide the Council and NMFS with a report of research findings, which must include at least the following: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the sea scallop research.

■ 11. In § 648.59, paragraphs (b)(3) and (d)(3) are revised to read as follows.

§ 648.59 Sea Scallop Access Areas.

* * * * *

(b) * * *

(3) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIA1	41°26′ N	68°30′ W
CAIA2	40°58′ N	68°30′ W
CAIA3	40°55′ N	68°53′ W
CAIA4	41°04.5′ N	69°01′ W
CAIA1	41°26′ N	68°30′ W

* * * * *

(d) * * *

(3) The Nantucket Lightship Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLAA1	40°50′ N	69°30′ W
NLAA2	40°50′ N	69°00′ W
NLAA3	40°20′ N	69°00′ W
NLAA4	40°20′ N	69°30′ W
NLAA1	40°50′ N	69°30′ W

* * * * *

■ 12. In § 648.60, paragraph (a)(5)(iii) is removed and reserved, and paragraphs (a)(9), (c)(3), and (e)(1) are revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(9) *Reporting.* The owner or operator must submit reports through the VMS, as specified in § 648.10(f)(4)(i).

* * * * *

(c) * * *

(3) The vessel owner/operator must report the termination of the trip prior to entering the access area if the trip is terminated while transiting to the area, or prior to leaving the Sea Scallop Access Area if the trip is terminated after entering the access area, by VMS e-mail messaging, with the following information: Vessel name, vessel owner, vessel operator, time of trip termination, reason for terminating the trip (for NMFS recordkeeping purposes), expected date and time of return to port, and amount of scallops on board in pounds;

* * * * *

(e) * * *

(1) Research set-aside may be harvested in an access area that is open in the applicable fishing year, as specified in § 648.59.

* * * * *

■ 13. Section 648.61 is revised to read as follows:

§ 648.61 EFH closed areas.

(a) No vessel fishing for scallops, or person on a vessel fishing for scallops, may enter, fish in, or be in the EFH Closure Areas described in paragraphs (a)(1) through (6) of this section, unless otherwise specified. A chart depicting these areas is available from the Regional Administrator upon request.

(1) *Western GOM Habitat Closure Area.* The restrictions specified in paragraph (a) of this section apply to the Western GOM Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

WESTERN GOM HABITAT CLOSURE AREA

Point	N. lat.	W. long.
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′
WGM5	42°15′	70°00′
WGM6	43°15′	70°00′
WGM4	43°15′	70°15′

(2) *Cashes Ledge Habitat Closure Area.* The restrictions specified in paragraph (a) of this section apply to the Cashes Ledge Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

CASHES LEDGE HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CLH1	43°01′	69°03′
CLH2	43°01′	68°52′
CLH3	42°45′	68°52′
CLH4	42°45′	69°03′
CLH1	43°01′	69°03′

(3) *Jeffrey's Bank Habitat Closure Area.* The restrictions specified in paragraph (a) of this section apply to the Jeffrey's Bank Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

JEFFREY'S BANK HABITAT CLOSURE AREA

Point	N. lat.	W. long.
JB1	43°40′	68°50′
JB2	43°40′	68°40′
JB3	43°20′	68°40′
JB4	43°20′	68°50′
JB1	43°40′	68°50′

(4) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (a) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I–North and Closed Area I–South, which are the areas bounded by straight lines connecting the following points in the order stated:

CLOSED AREA I—NORTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CI1	41°30′	69°23′
CI4	41°30′	68°30′
CIH1	41°26′	68°30′
CIH2	41°04′	69°01′
CI1	41°30′	69°23′

CLOSED AREA I—SOUTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CIH3	40°55′	68°53′
CIH4	40°58′	68°30′
CI3	40°45′	68°30′
CI2	40°45′	68°45′
CIH3	40°55′	68°53′

(5) *Closed Area II Habitat Closure Area.* The restrictions specified in this paragraph (a) apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bounded by straight lines connecting the following points in the order stated:

CLOSED AREA II HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
CIIH1	42°10′	67°20′
CIIH2	42°10′	67°9.3′
CIIH3	42°00′	67°0.5′
CIIH4	42°00′	67°10′
CIIH5	41°50′	67°10′
CIIH6	41°50′	67°20′
CIIH1	42°10′	67°20′

(6) *Nantucket Lightship Habitat Closure Area.* The restrictions specified in paragraph (a) of this section apply to the Nantucket Lightship Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

NANTUCKET LIGHTSHIP HABITAT CLOSED AREA

Point	N. lat.	W. long.
NLH1	41°10′	70°00′
NLH2	41°10′	69°50′
NLH3	40°50′	69°30′
NLH4	40°20′	69°30′
NLH5	40°20′	70°00′
NLH1	41°10′	70°00′

(b) *Transiting.* A vessel may transit the EFH Closure Areas as defined in paragraphs (a)(1) through (6) of this section, unless otherwise restricted, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit the CAII EFH closed area, as defined in paragraph (a)(6) of this section, provided there is a compelling safety reason to enter the area and all gear is stowed in accordance with the provisions of § 648.23(b).

■ 14. In § 648.62, paragraph (b)(3) is added to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.

* * * * *

(b) * * *

(3) If the TAC specified in paragraph (b)(1) of this section is exceeded, the amount of NGOM scallop landings in excess of the TAC specified in paragraph (b)(1) of this section shall be deducted from the NGOM TAC for the subsequent fishing year, as soon as practicable, once scallop landings data for the NGOM fishery is available.

* * * * *

■ 15. Section 648.64 is added to read as follows:

§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

(a) As specified in § 648.55(d), and pursuant to the biennial framework

adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder. The sub-ACL for the 2011 through 2013 fishing years are as follows:

(1) *2011.* 82 mt for the Southern New England/Mid-Atlantic stock of yellowtail flounder and 200.8 mt for the Georges Bank stock of yellowtail flounder.

(2) *2012.* 127 mt for the Southern New England/Mid-Atlantic stock of yellowtail flounder and 307.5 mt for the Georges Bank stock of yellowtail flounder.

(3) *2013.* To be determined.

(b) *Georges Bank accountability measure.* (1) If the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (b)(2) of this section:

GEORGES BANK YELLOWTAIL CLOSURE

Point	N. lat.	W. long.
GBYT AM 1	41°50′	66°51.94′
GBYT AM 2	40°30.75′	65°44.96′
GBYT AM 3	40°30′	66°40′
GBYT AM 4	40°40′	66°40′
GBYT AM 5	40°40′	66°50′
GBYT AM 6	40°50′	66°50′
GBYT AM 7	40°50′	67°00′
GBYT AM 8	41°00′	67°00′
GBYT AM 9	41°00′	67°20′
GBYT AM 10	41°10′	67°20′
GBYT AM 11	41°10′	67°40′
GBYT AM 12	41°50′	67°40′
GBYT AM 1	41°50′	66°51.94′

(2) *Duration of closure.* The Georges Bank yellowtail flounder accountability measure closed area shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

(i) For years when the Closed Area II Sea Scallop Access Area is open, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
1	March through May.
2–24	March through June.
25–38	March through July.
39–57	March through August.
58–63	March through September.
64–65	March through October.
66–68	March through November.
69	March through December.
70 and higher	March through February.

(ii) For fishing years when the Closed Area II Sea Scallop Access Area is closed to scallop fishing, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
1	March through May.
2	March through June.
3	March through July.
4–5	March through August.
6 and higher	March through February.

(c) *Southern New England/Mid-Atlantic accountability measure.* (1) If the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (c)(2) of this section:

SOUTHERN NEW ENGLAND YELLOWTAIL CLOSURE

Point	N. lat.	W. long.
SNEYT AM 1	41°28.4′	71°10.25′
SNEYT AM 2	41°28.57′	71°10′
SNEYT AM 3	41°20′	71°10′
SNEYT AM 4	41°20′	70°50′
SNEYT AM 5	41°20′	70°30′
SNEYT AM 6	41°18′	70°15′
SNEYT AM 7	41°17.69′	70°12.54′
SNEYT AM 8	41°14.73′	70°00′
SNEYT AM 9	39°50′	70°00′
SNEYT AM 10	39°50′	71°00′
SNEYT AM 11	39°50′	71°40′
SNEYT AM 12	40°00′	71°40′
SNEYT AM 13	40°00′	73°00′
SNEYT AM 14	40°41.23′	73°00′
SNEYT AM 15	41°00′	71°55′
SNEYT AM 16	41°00′	71°40′
SNEYT AM 17	41°20′	71°40′
SNEYT AM 18	41°21.15′	71°40′

(2) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closed area shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, as follows:

Percent overage of YTF sub-ACL	Length of closure
1–2	March.
3–5	March and April.
6–8	March through May.

Percent overage of YTF sub-ACL	Length of closure
9–12	March through June.
13–14	March through July.
15	March through August.
16	March through September.
17	March through October.
18	March through November.
19	March through January.
20 and higher	March through February.

(d) *Exemption for LAGC IFQ vessels.* Vessels issued an LAGC IFQ permit and fishing under the LAGC IFQ scallop fishery shall be exempt from the closure(s) specified in paragraphs (b) and (c) of this section. Yellowtail bycatch by such vessels shall be counted against the applicable yellowtail flounder sub-ACL specified in paragraph (a) of this section.

(e) *Process for implementing the AM.* On or about January 15 of each year, the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded, or is projected to be exceeded, by scallop vessels prior to the end of the scallop fishing year ending on February 28/29. The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. The Regional Administrator shall implement the AM in accordance with the APA and notify owners of limited access scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch, overage, and projection that resulted in the closure.

(f) *AM for the 2011 fishing year.* AMs shall be applied in the 2011 fishing year for any overage of the applicable yellowtail flounder stock's total ACL in the 2010 fishing year in accordance with the APA. If a 2010 yellowtail flounder subcomponent catch allocation was exceeded in the 2010 fishing year, and that overage caused the total yellowtail flounder ACL for that stock specified in accordance with § 648.90(a)(4) and § 648.90(a)(6) to be exceeded, the Regional Administrator shall implement the yellowtail flounder AM closure for the area, as defined in paragraph (b)(1) or (c)(1) of this section as soon as practicable after the effective date of this regulation. The closure shall be effective on the date specified by the Regional Administrator and the area shall remained closed for a period of time equal to the period of time specified in paragraphs (b)(2)(i)(A), (b)(2)(i)(B), or (c)(2) of this section, as applicable. For example, if the overage is 3 to 5 percent for the Southern New England/Mid-Atlantic yellowtail stock, and the closure is effective beginning July 15, 2011, the closure shall remain in effect through September 15, 2011, a 2-month period equivalent to the March–April, 2-month closure specified in paragraph (c)(2) of this section.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 22; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110118038–1314–02]

RIN 0648–BA72

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 22

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

ACTION: Final rule.

SUMMARY: NMFS is implementing measures specified in Framework Adjustment 22 (Framework 22) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed and adopted by the New England Fishery Management Council (Council). The specifications in Framework 22 are based on, and are being implemented in conjunction with, the management measures in Amendment 15 to the FMP (Amendment 15) that establish the process for setting annual catch limits (ACLs) and accountability measures (AMs) to bring the FMP into compliance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The purpose of Framework 22 is to set the following scallop management measures for the 2011 through 2013 fishing years (FYs): The overfishing limit (OFL), acceptable biological catches (ABC), ACLs, and annual catch targets (ACTs) for both the limited access (LA) and limited access general category (LAGC) fleets; open area days-at-sea (DAS) and Sea Scallop Access Area (access area) trip allocations; DAS adjustments if an access area yellowtail flounder (YTF) total allowable catch (TAC) is caught; LAGC-specific allocations, including access area trip allocations for vessels with individual fishing quotas (IFQs), the Northern Gulf of Maine (NGOM) TAC, and the incidental target TAC; management measures to minimize impacts of incidental take of sea turtles as required by the March 14, 2008, Atlantic Sea Scallop Biological Opinion (Biological Opinion); and the elimination of the default Georges Bank (GB) access area rotation schedule. Consistent with proposed measures in Amendment 15, Framework 22 sets FY 2013 management measures as precautionary default measures, to be applied if a new biennial framework adjustment is not implemented by the start of FY 2013.

DATES: Effective August 1, 2011.

ADDRESSES: An environmental assessment (EA) was prepared for Framework 22 that describes the action and other considered alternatives and provides a thorough analysis of the impacts of the measures and alternatives. Copies of Framework 22, the EA, and the Initial Regulatory Flexibility Analysis (IRFA) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978–281–9244; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Framework 22 was developed and adopted by the Council, partially in conjunction with and based on Amendment 15 measures, in order to comply with requirements of the MSA and to meet the FMP's objectives to prevent overfishing and improve yield-per-recruit from the fishery. Consequently, the authority to implement Framework 22 is in part based on NMFS' approval of Amendment 15, which is concurrently under rulemaking. Framework 22 specifies measures for FYs 2011 through 2013. FY 2013 measures will go into place as a default, should the biennial framework to specify FY 2013–2014 measures be delayed beyond the start of FY 2013.

The Council adopted Framework 22 on November 17, 2010, and submitted it to NMFS on March 22, 2011. The Council reviewed the Framework 22 proposed rule regulations as drafted by NMFS, which included regulations proposed by NMFS under the authority of section 305(d) of the MSA, and on March 18, 2011, deemed them to be necessary and consistent with section 303(c) of the MSA. The proposed rule for Framework 22 published in the **Federal Register** on April 29, 2011 (76 FR 23940), with a 30-day public comment period that ended May 31, 2011. Three comments were received on the proposed measures. On May 4, 2011, during the public comment period of the proposed rule, the Council and the scallop industry requested that emergency action be taken by NMFS to close the Nantucket Lightship (NLS) access area prior to its scheduled opening on June 15, 2011. NMFS agreed with taking this action and the emergency rule published in the **Federal Register** on June 1, 2011 (76 FR 31491). Although Framework 22 closes NLS, because Framework 22 was not approved and implemented by June 15, 2011, the area would have opened under the roll-over FY 2010 measures. This emergency closure prevented potentially high levels of scallop and YTF catch that could have resulted from opening the area prior to the approval and implementation of Framework 22, which could have been detrimental to the long-term management and health of the scallop fishery. This final rule will continue the NLS closure for the remainder of FY 2011 and, as such, the regulatory text of this action will replace regulations put in place by the emergency action.

The final Framework 22 management measures are described below. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

Specification of Scallop OFL, ABC, ACL, and ACTs for FYs 2011 and 2012 and Default Specifications for FY 2013

These specifications are set in accordance with measures and criteria in Amendment 15. The OFL is set based on a fishing mortality rate (F) of 0.38, equivalent to the F threshold updated through the most recent scallop stock assessment. The ABC and equivalent total ACL for each FY are based on an F of 0.32, the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended ABCs for the FY 2011 and 2012 scallop fisheries of 60.1 M lb (27,269 mt) and 63.8 M lb (28,961 mt), respectively, after accounting for discards and incidental mortality. The Scallop Plan Development Team (PDT) estimated the FY 2013 ABC of 63.3 M lb (28,700 mt) using the same approach that was reviewed and approved by the SSC to set the ABC for FYs 2011 and 2012. The decision to include third-year default measures occurred after the SSC made ABC recommendations for this action. The SSC will recommend an ABC in conjunction with the next biennial framework adjustment for FY 2013 and FY 2014, as well as a default ABC for FY 2015.

Table 1 outlines the scallop fishery catch limits that are derived from these ABC values. After deducting the incidental target TAC and the research and observer set-asides, the remaining ACL available to the fishery is proportioned out according to Amendment 11 fleet allocations, with 94.5 percent allocated to the LA scallop fleet, 5 percent allocated to the LAGC IFQ fleet, and the remaining 0.5 percent

allocated to LA scallop vessels that also have LAGC IFQ permits. These separate ACLs and their corresponding ACTs are referred to as sub-ACLs and sub-ACTs, respectively, throughout this action. Amendment 15 determined that no buffers to account for management uncertainty are necessary in setting the LAGC sub-ACLs, meaning that the LAGC sub-ACLs equal the LAGC sub-ACTs. As a result, the LAGC sub-ACL values in Table 1, based on an F of 0.32, represent the amount of catch from which IFQ percent shares will be applied to calculate each vessel's IFQ for a given FY. For the LA fleet, Amendment 15 set a management uncertainty buffer based on the F associated with a 75-percent probability of remaining below the F associated with ABC/ACL, which results in an F of 0.28.

TABLE 1—SCALLOP CATCH LIMITS FOR FYS 2011 THROUGH 2013 FOR BOTH THE LA AND LAGC IFQ FLEETS (MT)

	2011	2012	2013
OFL	32,387	34,382	34,081
ABC/ACL	27,269	28,961	28,700
Incidental TAC	23	23	23
Research Set-Aside (RSA)	567	567	567
Observer Set-aside (1 percent of ABC/ACL)	273	290	287
LA sub-ACL(94.5 percent of total ACL, after deducting set-asides and incidental catch)	24,954	26,537	26,293
LA sub-ACT (adjusted for management uncertainty)	21,431	23,546	19,688
LAGC IFQ sub-ACL (5.0 percent of total ACL, after deducting set-asides and incidental catch)	1,320	1,404	1,391
LAGC IFQ sub-ACL for vessels with LA scallop permits (0.5 percent of total ACL, after deducting set-asides and incidental catch)	132	140	139

These allocations do not account for any adjustments that would be made year-to-year if the AMs specified in Amendment 15 are triggered due to annual landings exceeding the ACL.

Open Area DAS Allocations

This action implements vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (i.e., full-time, part-time, and occasional) for FYs 2011 through 2013 (Table 2). FY 2013 DAS allocations are set at a precautionary level equal to 75 percent of what current biomass projections indicate could be allocated to each LA scallop vessel for the entire FY to avoid over-allocating DAS to the fleet in the event that the framework that would set those allocations, if delayed past the start of FY 2013, estimates that DAS should be less than currently projected.

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR FYS 2011 THROUGH 2013

Scallop open area allocations			
Permit category	FY 2011	FY 2012	FY 2013
Full-Time	32	34	26
Part-Time	13	14	11
Occasional ..	3	3	3

Because Framework 22 was not implemented at the March 1 start of FY 2011, and the DAS allocated at the start of FY 2011 are higher than those specified in Framework 22, it is possible that scallop vessels could exceed their Framework 22 DAS allocations during the interim period between March 1, 2011, and the effective date of this final rule. Therefore, Framework 22 specifies that the number of LA open area DAS used in FY 2011 by a vessel (excluding carryover DAS) that exceed the final FY 2011 open area DAS allocation for that vessel will be deducted from the vessel's FY 2012 open area DAS allocation. For example, if a full time vessel fishes 38 DAS between March 1, 2011, and the effective date of this final rule, 6 DAS (i.e., 38 DAS − 32 DAS) will be deducted from that vessel's FY 2012 DAS allocation, resulting in a total of 28 DAS for FY 2012.

Open Area DAS Adjustment if Access Area YTF TAC is Attained

Under the Northeast (NE) Multispecies FMP, 10 percent of the GB YTF TAC (i.e., total GB YTF ACL) is allocated to scallop vessels fishing in the Closed Area I (CAI) and Closed Area II (CAII) Access Areas, combined; and 10 percent of the Southern New England/Mid-Atlantic (SNE/MA) YTF TAC (i.e., total SNE/MA YTF ACL) is allocated to scallop vessels fishing in NLS. Framework Adjustment 45 to the NE Multispecies FMP (76 FR 23042; April 25, 2011) set the total YTF ACLs outlined in Table 3 for FYs 2011 and 2012 (FY 2013 values will be determined in a future framework adjustment to the NE multispecies FMP). Table 3 also includes the TACs available for the scallop access areas (i.e., 10 percent of each total ACL) and, for comparison, the sub-ACLs allocated to the scallop fishery. The scallop fishery's YTF sub-ACLs and YTF access area TACs are not additive. For example, YTF catch from CAII is applied to both the GB sub-ACL and the YTF TAC available for the two GB access area.

TABLE 3—TOTAL ACLS, SCALLOP SUB-ACLS, AND ACCESS AREA TACS FOR YTF IN FYS 2011 AND 2012

FY	YTF stock	Total ACL (mt)	Scallop access area YTF TAC (mt)	Scallop sub-ACL (mt)
FY 2011	GB	1,416	141.6	82
	SNE	641	64.1	200.8
FY 2012	GB	936	93.6	127

TABLE 3—TOTAL ACLS, SCALLOP SUB-ACLS, AND ACCESS AREA TACS FOR YTF IN FYS 2011 AND 2012—Continued

FY	YTF stock	Total ACL (mt)	Scallop access area YTF TAC (mt)	Scallop sub-ACL (mt)
	SNE	1,426	142.6	307.5

Under the NE multispecies regulations, if the GB or SNE/MA YTF TAC is caught, CAI and CAII, and/or NLS will close to further scallop fishing for the remainder of the FY. If a vessel has unutilized trip(s) after an access area is closed due to reaching the YTF TAC, it will be allocated additional open area DAS at a reduced rate. Unused access area trip(s) will be converted to open area DAS so that scallop fishing mortality that would have resulted from the access area trip(s) will be equivalent to the scallop fishing mortality resulting from the open area DAS allocation. The conversion used to allocate additional DAS from a YTF access area closure is based on Framework 22's FYs 2011–2013 LA scallop possession limits for access area trips of 18,000 lb (8,165 kg) for full-time vessels, 14,400 lb (6,532 kg) for part-time vessels, and 6,000 lb (2,723 kg) for occasional vessels, and are as follows: For a given FY, the pounds remaining from an access area trip(s) (i.e., from a fully unused trip(s) and/or unused compensation trip(s)) is first multiplied by the average meat count (i.e., number of shucked scallop abductor muscles per lb) from that area and then subsequently divided by both the open area average meat count and by the open area landings-per-unit-effort (LPUE), resulting in a DAS allocation comparable to the unused access area pounds. For example, in FY 2011, based on a catch limit of 18,000 lb (8,165 kg), and average meat count for scallops in CAI estimated to be 10.6 meats/lb, 190,800 scallops would be removed per full-time trip (18,000 lb (8,165 kg) × 10.6 meats/lb = 190,800 meats). The meat count and LPUE for open areas in FY 2011 are estimated to be 18.4 meats/lb and 2,441 lb/DAS, respectively. The estimated number of open area DAS a full-time vessel would use to catch the same number of scallops as it would in CAI with an 18,000-lb (8,165-kg) possession limit is estimated to be 4.3 DAS (190,800 scallops/(18.4 meats/lb × 2,441 lb/DAS = 4.3 DAS). Therefore, if a full-time vessel had an unused CAI trip at the time of a CAI YTF TAC closure, the vessel will be allocated 4.3 DAS in open areas. Table 4 outlines the DAS/trip conversion for unused full-time, part-time, and occasional vessels access area trips. This trip/DAS conversion applies to all full-time vessels, but only to occasional or part-time vessels that have no other available access areas in which to take their access area trip(s). If a vessel has an unused compensation trip in an access area that closes due to YTF, the same calculation outlined above applies, resulting in a proportional DAS increase to that of a fully unused trip allocation. For example, in FY 2011, if a full-time vessel had an unused 9,000-lb (4,082-kg) CAI compensation trip (i.e., half of the full-time vessel's 18,000-lb (8,165-kg) possession limit) at the time of a CAI YTF TAC closure, the vessel will be allocated 2.15 DAS (i.e., half of the 4.3 DAS that is allocated for a full unused CAI trip).

TABLE 4—SCALLOP ACCESS AREA TRIP/DAS CONVERSIONS IF CAI, CAII, AND/OR NLS CLOSE DUE TO FULL HARVEST OF GB AND/OR SNE/MA YTF TAC

		Access area trip conversion to open area DAS		
Permit category	FY	CAI	CAII	NLS
Full-Time	2011	4.3	5.7	
	2012	4.4	5.4	4.3
	2013		5.4	4.9
Part-Time	2011	3.4	4.5	
	2012	3.6	4.3	3.4
	2013		4.3	3.9
Occasional	2011	1.4	1.9	
	2012	1.5	1.8	1.4
	2013		1.8	1.6

LA Trip Allocations, the Random Allocation Process, and Possession Limits for Scallop Access Areas

This action specifies a new access area allocation scheme for full-time vessels fishing in scallop access areas. In terms of allocations to the fleet, full-time LA scallop vessels will receive four access area trips in each FY from 2011 through 2013. In order to avoid allocating trips into access areas with scallop biomass levels not large enough to support a full trip by all 313 LA full-time vessels in a single FY, Framework 22 allocates ''split-fleet'' trips into certain access areas. In order to make this process as fair as possible to scallop vessel owners, prior to the start of each FY, NMFS will randomly allocate half of the full-time vessels a full trip into a specific area(s), and half of the full-time vessels a full trip into a different area(s) through the process outlined in Framework 22. Ultimately, all vessels receive the same number of total access area trips, although the specific areas to which they have access may differ (Table 4). This allocation scheme is a ''random allocation process'' rather than a lottery. The process and rationale for randomly allocating access area trips to full-time vessels are more fully described in detail in the preamble of the proposed rule and in Section 2.4.2 of the Council's Framework 22 document and is not repeated here.

In order to facilitate trading trips between vessels, the FY 2011 allocations for full-time vessels have already been identified, and can be found in Section 2.4.2 of the Framework 22 document (See **ADDRESSES**), as well as NMFS' Web site. NMFS will update these preliminary allocations, subject to permit renewal requirements, with any

changes in vessel ownership and/or vessel replacements. An updated list of FY 2011 vessel assignments will be posted on NMFS' Web site and mailed to LA permit holders prior to the effective date of this final rule. The split-fleet trip assignments will also be made publically available through NMFS' Web site and in permit holder letters prior to the start of FYs 2012 and 2013. The decision to use a random allocation process to allocate access area trips to full-time vessels will be re-evaluated in a future framework adjustment.

In FY 2011, all full-time scallop vessels are allocated one trip in the Delmarva Access Area (Delmarva), one trip into the Hudson Canyon Access Area (HC), and one trip into CAI (Table 5). In addition, 157 full-time vessels are allocated one trip into CAII, and the other 156 full-time vessels are allocated an additional trip into CAI, for a total of four access area trips per full-time vessel. A part-time scallop vessel is allocated two trips, which could be taken in one of the following combinations: Two trips in CAI; one trip in the CAI and one trip in CAII; one trip in CAI and one trip in HC; one trip in CAI and one trip in Delmarva; one trip in CAII and one trip in HC; one trip in CAII and one trip in Delmarva; or one trip in HC and one trip in Delmarva. An occasional vessel is allocated one trip, which could be taken in any one open access area.

Because these trip allocations are being implemented after March 1, 2011, and the current regulations that rolled over into FY 2011 are inconsistent with the proposed specifications, it is possible that during the interim between the start of FY 2011 and the implementation of this rule, a scallop vessel could take a trip in an area not open under these final measures. For example, under the current roll-over provisions, at the start of FY 2011, the Elephant Trunk Access Area (ETAA) is an access area, and full-time vessels have received the same allocation as they received in FY 2010 (*i.e.*, two ETAA trips, one Delmarva trip, and one NLS trip). However, Framework 22 changes the ETAA into an open area to be fished under DAS allocations and continues the NLS emergency closure for the duration of FY 2011. Framework 22 has accounted for the ETAA changing from an access area to an open area by including the calculated biomass in this and other areas in the overall open area DAS allocations for FY 2011.

If, during FY 2011, a vessel fishes on an ETAA trip allocated during the interim period between the start of FY 2011 and the implementation of this rule, any pounds landed from a declared ETAA trip shall be converted to the equivalent DAS and deducted from that vessel's open area DAS allocations in FY 2012. The pounds a vessel lands from the ETAA shall first be multiplied by the estimated ETAA average meat count (18.4 meats/lb) and then divided by the product of the estimated open area average meat count (also 18.4 meats/lb) multiplied by the estimated open area LPUE for FY 2011 (2,441 lb/DAS). For example, if a full-time vessel lands the full 18,000-lb (8,165-kg) possession limit on an ETAA trip in FY 2011, that vessel shall incur a DAS deduction of 7.4 DAS in FY 2012 ((18,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS)), to account for those landings, resulting in a total FY 2012 DAS allocation of 26.8 DAS (*i.e.*, 34 DAS minus 7.4 DAS). Part-time and occasional vessels receive deductions of 5.9 DAS and 2.5 DAS, respectively, for landing their full trip possession limits from the ETAA in FY 2011. If a vessel only lands a portion of its full possession limit, the applicable DAS reduction shall be proportional to those landings. For example, if a full-time vessel lands 9,000 lb (4,082 kg) during a declared ETAA trip in FY 2011, that vessel's FY 2012 DAS allocation shall be reduced by 3.7 DAS (*i.e.*, half of the DAS that will be deducted for a full trip).

Framework 22 includes a provision that this DAS deduction does not apply to vessels that fished compensation trips in the ETAA from trips broken during the last 60 days of FY 2010. The regulations allow for these compensation trips to be taken within the first 60 days of the subsequent FY if the access area from where the trip was broken remains open. Because the ETAA was still considered an access area under the roll-over regulations at the start of FY 2011, any FY 2010 compensation trips started prior to April 29, 2011, will not be counted against FY 2011 DAS.

Due to the emergency action to close NLS, vessels did not have the opportunity to fish in NLS. This final rule continues the NLS closure for the duration of FY 2011. Because of the emergency rule, the pay-back measure included in the proposed rule for Framework 22 to account for scallops that could be landed from vessels that declare NLS trips in FY 2011 is no longer necessary.

Because Delmarva was the only access area that remains open under the measures in place at the start of FY 2011 and specified in this final rule implementing Framework 22, the preamble to the proposed rule discussed the potential complications for vessels that exchanged a Delmarva trip for a trip in the ETAA prior to the implementation of Framework 22. In summary, if a vessel owner gave up its Delmarva trip through an exchange with another vessel owner, and gained an additional ETAA as a result, its three ETAA trips (*i.e.,* the two ETAA trips allocated at the start of FY 2011 and its ETAA trip gained through the trip exchange) would disappear after Framework 22 is implemented, assuming the vessel did not declare into and land scallops from the ETAA. With the loss of its two ETAA trips, one NLS trip, and one traded Delmarva trip, the vessel would end up with a total FY 2011 access area allocation of three trips (*e.g.*, one in HC, and either two in CAI or one in CAI and one in CAII). Conversely, the vessel that gained the additional Delmarva trip through the exchange would ultimately have a total FY 2011 access area trip allocation of five trips (*e.g.*, two in Delmarva, one in HC, and either two in CAI or one in CAI and one in CAII). To avoid potential inequitable consequences of trip exchanges due to the late implementation of Framework 22 to the extent practicable, this final rule specifies that if a vessel acquired an additional unused ETAA trip through a trip exchange, it will be credited for that trip with additional DAS, equivalent to the trip's possession limit, as soon as possible after Framework 22's implementation. For example, a full-time vessel that had exchanged for an ETAA trip will receive a DAS credit of 7.4 DAS if that vessel did not declare into and fish that ETAA trip. That vessel will then have a total FY 2011 DAS allocation of 39.4 DAS (32 DAS plus 7.4 DAS). Similarly, part-time vessels will receive a credit of 5.9 DAS, if they initially received an additional ETAA trip through a trip exchange that is later removed upon implementation of Framework 22. In order to apply this trip exchange DAS conversion consistently, if the vessel fishes any part of an ETAA trip it gained through a trip exchange, those landings will be converted to DAS, using the same calculation described previously, and deducted from any DAS credit applied to FY 2011, rather than deducted in FY 2012. Although the Council has generally applied pay-back measures due to late framework implementation in the subsequent FY, this DAS credit, if applied to the subsequent FY, could have unintended ACL implications in FY 2012 by increasing the risk that the

LA fleet could exceed the ACL for that FY.

Framework 22 limits each full-time vessel to a total of only four access area trips in FY 2011. For the reason outlined above, a full-time vessel that receives an additional Delmarva trip through a trip exchange prior to Framework 22's implementation may end up with five access area trips as a result of the mid-year implementation of this rule. However, because this result would create an inconsistency in measures, this final rule clarifies that the 4-trip limit supersedes the potential for a vessel owner to have 5 access area trips, to avoid the potential risk of exceeding FY 2011 catch limits. If a full-time vessel receives a final FY 2011 allocation of five trips due to a previous trip exchange, that vessel must relinquish one trip in FY 2011 from its available access area trip allocation so that it receives the same number of access area trips as all other full-time vessels (*i.e.*, four trips). As soon as possible after the publication of this final rule, NMFS will send a notification letter to the owner of such a vessel regarding the requirement that one of the vessel's unused access area trips must be relinquished in FY 2011 to account for the previous trip exchange. The vessel owner will be given the opportunity to select the area from which the trip will be deducted, with NMFS determining the area if the vessel owner fails to respond within 30 days as requested.

No access area trips were allocated for CAI and CAII, and HC closed prior to this final rule, so no trips into those areas could be taken until Framework 22 is effective.

In FY 2012, all full-time scallop vessels are allocated a total of four access area trips (Table 5). Each full-time vessel is allocated one trip into CAII, and one trip into HC. The remaining two access area trips are allocated in the following combinations: One trip in CAI and one trip in NLS; one trip in CAI and one additional trip in HC; one trip in CAI and one trip in Delmarva; one trip in NLS and an additional trip in HC; one trip in NLS and one trip in Delmarva; or an additional trip in HC and one in Delmarva. Trip assignments, based on a random vessel assignment to the four applicable areas noted above, will be available prior to the start of FY 2012. Each part-time scallop vessel is allocated two trips in FY 2012, which could be taken in one of the following combinations: Two trips in HC; one trip in the CAI and one trip in NLS; one trip in CAI and one trip in HC; one trip in CAI and one trip in Delmarva; one trip in NLS and one trip in HC; one trip in NLS and one trip in Delmarva; or one trip in HC and one trip in Delmarva. Each occasional vessel is allocated one trip, which could be taken in any one open access area.

At the start of FY 2013, all full-time scallop vessels will be allocated one trip in CAII, one trip in NLS, and one trip in HC (Table 5). In addition, half the fleet will be allocated a trip in Delmarva and the other half of the fleet will be allocated another trip in HC, for a total of four access area trips for each full-time vessel. These allocations will be assigned and made publically available prior to the start of FY 2013. A part-time scallop vessel will be allocated two trips, which could be taken in one of the following combinations: Two trips in HC; one trip in CAII and one trip in NLS; one trip in CAII and one trip in HC; one trip in CAII and one trip in Delmarva; one trip in NLS and one trip in HC; one trip in NLS and one trip in Delmarva; or one trip in HC and one trip in Delmarva. An occasional vessel will be allocated one trip, which could be taken in any one open access area.

TABLE 5—SCALLOP ACCESS AREA TRIP ALLOCATIONS FOR FULL-TIME LA SCALLOP VESSELS DURING FY 2011–2013.*

	CAI	CAII	NLAA	HC	Delmarva
2011	1.5	0.5	.....	1	1
2012	0.5	1	0.5	1.5	0.5
2013	.....	1	1	1.5	0.5

* Split-fleet trips are identified by "0.5" and "1.5": The "0.5" indicates that half the fleet will be allocated one full trip into a specific access area and the "1.5" indicates that all full-time vessels will be allocated one full trip into a specific access area and half of the vessels will be allocated an additional full trip into that area.

LAGC Measures

1. *Sub-ACL for LAGC IFQ Vessels.* For LAGC IFQ vessels, this final rule sets a 2,910,800-lb (1,320-mt) ACL for FY 2011, a 3,095,450-lb (1,404-mt) ACL for FY 2012, and an initial ACL of 3,067,000 lb (1,391 mt) for FY 2013 (Table 1). IFQ allocations, not including carryover IFQ, are calculated by applying each vessel's IFQ contribution percentage to these ACLs. These allocations assume that no LAGC IFQ AMs are triggered. If a vessel exceeds its IFQ in a given FY, its IFQ for the subsequent FY will be deducted by the amount of the overage.

2. *Sub-ACL for LA Scallop Vessels With IFQ Permits.* For LA scallop vessels with IFQ permits, this final rule sets a 291,080-lb (132-mt) ACL for FY 2011, a 309,550-lb (140-mt) ACL for FY 2012, and an initial ACL of 306,700-lb (139 mt) for FY 2013 (Table 1). IFQ allocations, not including carryover IFQ, are calculated by applying each vessel's IFQ contribution percentage to these ACLs. These allocations assume that no LAGC IFQ AMs are triggered. If a vessel exceeds its IFQ in a given FY, its IFQ for the subsequent FY will be reduced by the amount of the overage.

3. *LAGC IFQ Trip Allocations and Possession Limits for Scallop Access Areas.* The LAGC IFQ fishery is allocated 5.5 percent of the overall TAC in each access area for FYs 2011 through 2013. LAGC IFQ vessels are not allocated trips into CAII, because these vessels are not expected to fish in that area due to its distance from shore. These percentages result in a specific number of fleet-wide trips for LAGC vessels fishing in access areas (Table 6). The areas will close to LAGC vessels when the Regional Administrator determines that the allocated number of trips have been taken in the applicable area.

TABLE 6—LAGC FLEET-WIDE ACCESS AREA TRIP ALLOCATIONS FOR FYS 2011 THROUGH 2013

Access area	FY 2011	FY 2012	FY 2013
CAI	890	296	.....
CAII	0	0	0
NLS	.....	296	595
HC	593	887	893
Delmarva	593	296	298

Because this action is implemented after the start of FY 2011, and the FY 2010 regulations that continued into FY 2011 are inconsistent with the regulations in this final rule, it is possible that LAGC scallop vessels could exceed the final FY 2011 fleet-wide trip allocation in Delmarva under Framework 22. The current regulations

allocate a total of 714 LAGC trips into Delmarva. If LAGC vessels exceed the final number of allocated trips from Delmarva in FY 2011, the number of excess trips will be deducted from the LAGC IFQ fleet Delmarva trip allocation in FY 2012. Although there have been some LAGC trips into the ETAA at the start of FY 2011, this area changes to an open area under this final rule. Because any landings from trips taken in the ETAA will be deducted from each vessel's IFQ allocations, and because there are no specific fleet-wide trips allocated to LAGC vessels fishing in open areas, there is no pay-back measure associated with LAGC vessels that fished in the ETAA prior to the implementation of this final rule.

4. *NGOM TAC.* This action sets a 70,000-lb (31,751-kg) annual NGOM TAC for FYs 2011 through 2013. These allocations for FY 2012 and FY 2013 assume that in a given FY there are no overages, which would trigger a pound-for-pound deduction in the subsequent FY to account for the overage based on the measures in Amendment 15.

5. *Scallop Incidental Catch Target TAC.* This action sets a 50,000-lb (22,680-kg) scallop incidental catch target TAC for FYs 2011 through 2013 to account for mortality from this component of the fishery, and to ensure that F-targets are not exceeded.

Research Set-Aside (RSA) Allocations

As specified in Amendment 15, this action deducts 1.25 M lb (567 mt) of scallops annually for FYs 2011 through 2013 from the ABC and sets it aside as the Scallop RSA to fund scallop research and to compensate participating vessels through the sale of scallops harvested under RSA projects. Upon the effective date of Amendment 15 measures, this set-aside will be available for harvest in open areas. Framework 22 sets the access area rotation schedule, and vessels will be able to harvest RSA from access areas upon the effective date of this final rule to implement Framework 22 measures. Unlike previous scallop framework adjustments, Framework 22 does not set specific RSA quota allocations within specific access areas. Projects are now assigned harvest allocations through the RSA application review and approval process, and a vessel with available RSA could harvest allotted RSA from an access area until the RSA allocated to that vessel and/or project is fully harvested.

Observer Set-Aside Allocations

This action removes 1 percent from the ABC and sets it aside for the industry-funded observer program to help defray the cost of carrying an observer. This observer set-aside is further divided proportionally into access areas and open areas. Scallop vessels on an observed DAS trip are charged a reduced DAS rate, and scallop vessels on an observed access area trip are authorized an increased possession limit. The Regional Administrator has specified the following compensation rate for FY 2011: Vessels carrying an observer will receive 180 lb (82 kg) of scallops per day, or part of a day, when fishing in an access area, and LA DAS vessels will be compensated 0.08 DAS per DAS fished during observed open area trips (i.e., vessels will be charged 0.92 DAS per DAS fished with an observer onboard). The Regional Administrator shall periodically review, at least once prior to each fishing year, all available fishery information to determine if these rates should be adjusted. The FY 2011 through 2013 observer set-aside allocations for open and access areas are outlined in Table 7.

TABLE 7—OPEN AREA, ACCESS AREA, AND TOTAL OBSERVER SET-ASIDE TACS FOR FYS 2011 THROUGH 2013

[Mt, unless otherwise specified]

Area	FY 2011	FY 2012	FY 2013
Open areas	139	161	136
Open (in DAS)	137	133	112
CAI	51	16	N/A
CAII	16	31	36
NLS	N/A	16	38
HC	34	49	57
Delmarva	34	16	19
Total	273	290	287

Measures To Minimize the Impacts of Incidental Take of Sea Turtles

Under the Endangered Species Act (ESA), each Federal agency is required to ensure its actions are not likely to jeopardize the continued existence of any listed species or critical habitat. If a Federal action is likely to adversely affect a listed species, section 7 of the ESA requires formal consultation. To date, five formal consultations, with resulting Biological Opinions, have been completed on the Atlantic sea scallop fishery. All five have had the same conclusion: The continued authorization of the scallop fishery may adversely affect, but is not likely to jeopardize, the continued existence of four sea turtles species (Kemp's ridley, loggerhead, green, and leatherback). In the accompanying Incidental Take Statements of the Biological Opinions, NMFS is required to identify and implement non-discretionary reasonable and prudent measures (RPMs) necessary or appropriate to minimize the impacts of any incidental take, as well as Terms and Conditions (T/C) for implementing each RPM. RPMs and T/C cannot alter the basic design, location, scope, duration, or timing of the action, and may involve only minor changes. Five RPMs and T/Cs were identified in the most recent Biological Opinion, as amended on February 5, 2009. This final rule includes management measures to comply with the first of these RPMs, which requires a limit of fishing effort in the Mid-Atlantic during times when sea turtle distribution is expected to overlap with scallop fishing activity. The Biological Opinion requires that this restriction be limited to a level that will not result in more than a minor impact on the scallop fishery.

For FYs 2011 through 2013, Framework 22 defines ''more than a minor impact'' on the fishery as one that results in a 10-percent or greater shift in baseline effort from the Mid-Atlantic during June 15 through October 31 into other areas and times of year when sea turtle interactions are less likely. This definition, as well as management measures to comply with the Biological Opinion and any future Biological Opinions, will be re-evaluated for FY 2013 and future fishing years in subsequent framework actions (or if a new Biological Opinion occurs, a framework can be reinitiated). An informal consultation under the ESA was prepared to analyze the impact of the Framework 22 on threatened and endangered sea turtles and NMFS has determined that fishing activities pursuant to Framework 22 will not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on this fishery.

For FYs 2011 through 2013, each full-time and part-time vessel will be restricted to taking one access area trip to areas in the Mid-Atlantic (*i.e.*, HC and Delmarva) during June 15 through October 31 of each FY. However, this final rule includes an additional provision for full-time vessels: If a vessel has traded access area trips with another vessel so that it has a total allocation of four trips in the Mid-Atlantic access areas, the vessel will be able to fish up to two of the four trips from June 15 through October 31. This measure is only applicable to full-time vessels, because part-time vessels are only allocated a total of two access area trips to be fished in any open access area. Occasional vessels are not affected by this measure because they are only

allocated a single access area trip. This provision is to minimize any distributional impacts that may result from the ''split fleet'' trip random allocation assignment and allows for more flexibility in access area trip exchanges. LAGC vessels fishing in the Mid-Atlantic access areas under the fleet-wide IFQ trips are also not affected by this trip restriction.

Compliance with the trip restriction will be monitored using pounds landed during June 15 through October 31, rather than trip declarations, which could result in landings that are less than the allowable trip possession limit. For example, full-time and part-time LA vessels will be restricted to landing a maximum of 18,000 lb (8,165 kg) per trip for full-time vessels and 14,400 lb (6,532 kg) per trip for part-time vessels from those areas (i.e., the equivalent of one full access area trip, depending on the permit category's possession limit). Additionally, if a full-time vessel has acquired four Mid-Atlantic access trips due to a trip exchange(s), that vessel will be restricted to landing a combined maximum of 36,000 lb (16,329 kg) from HC and Delmarva (i.e., the equivalent of two full access area trips). Compensation trips may not be combined during this time period in a way that will allow more than 14,400 lb (6,532 kg) for part-time vessels, 18,000 lb (8,165 kg) for full-time vessels, or 36,000 lb (16,329 kg) for full-time vessels with a total allocation of four Mid-Atlantic access area trips, to be landed from HC and Delmarva, combined, from June 15 through October 31 of FYs 2011 through 2013. For example, if a full-time vessel is allocated two total trips into the Mid-Atlantic access areas and that vessel declared and subsequently broke one of the two trips into Mid-Atlantic access areas prior to June 15, it will have one full trip (*i.e.,* 18,000 lb, 8,165 kg) available for use during the trip-restriction window. In that case, the vessel could only harvest up to 18,000 lb (8,165 kg) total from June 15 through October 31, in the Mid-Atlantic access areas, either by fishing its compensation trip and part of its full access area trip, or by fishing only one full access area trip and waiting to declare the compensation trip on or after November 1. If a vessel fishes any part of an access area trip in HC or Delmarva during this time period (*i.e.,* starts a trip on June 13 and ends the trip on June 15), landings from that trip will count towards the one- or two-trip limit. The additional pounds allocated to vessels with on-board observers during trips taken within this time period will not count towards the aforementioned possession and landing restrictions.

Because this final rule is implemented mid-year, and the current regulations are inconsistent with the proposed specifications, it is possible that full-time and part-time vessels could exceed their final FY 2011 access area trip restrictions prior to this rule becoming effective. If this measure is implemented after June 15, 2011, a full-time or part-time vessel that landed more than 18,000 lb (8,165 kg) or 14,400 lb (6,532 kg), respectively (*i.e.,* more than the equivalent of one full access area trip), between June 15, 2011, and the implementation of Framework 22, will be prevented from taking an access area trip in FY 2012 in the Mid-Atlantic during June 15 through October. Alternatively, a full-time vessel could make up for the overage by trading in trips so that it had a total of four trips allocated into the Mid-Atlantic access areas and continue to fish up to a maximum of 36,000 lb (16,329 kg) through October 31, 2011 (*i.e.,* the equivalent of two full access area trips).

Under this final rule, the Delmarva and ETAA seasonal closures are no longer in effect.

Elimination of the GB Access Area Rotational Schedule

This action eliminates the default GB access area schedule that was implemented through Framework 16 to the FMP (69 FR 63460; November 2, 2004). The Council intended that this default cycle would be in place until the Council modified it through a future action. The schedule has based access area openings on the premise that an area would be open for 1 year, followed by a 2-year closure. However, the schedule has been consistently revised in framework actions based on area-specific scallop biomass projections. The pre-defined schedule has led to inconsistencies between roll-over measures at the start of a FY when a framework is delayed and unnecessary confusion. This final rule removes the schedule from the regulations, allowing for the GB access area scheduled openings to be based on updated resource information. Third-year default measures (*e.g.,* FY 2013) will provide the access area schedule for a subsequent FY if the subsequent framework action is delayed past the start of the FY.

Comments and Responses

NMFS received three comment letters in response to the proposed rule from the Fisheries Survival Fund (FSF), writing on behalf of full-time limited access scallop fleet members; a member of the United National Fishermen's Association; and an individual. Six relevant issues relating to the proposed Framework 22 measures were raised and are responded to below. Other comments were not relevant to this rulemaking and are therefore not responded to in this final rule. FSF submitted comments that were related to Amendment 15 management measures, and those will be addressed in the final rule to Amendment 15. NMFS may only approve, disapprove, or partially approve measures in Framework 22, and cannot substantively amend, add, or delete measures beyond what is necessary under section 305(d) of the MSA to discharge its responsibility to carry out such measures.

Comment 1: Although generally supportive of Framework 22 management measures, FSF commented that there is an ongoing appearance of exceeding catch targets in the scallop fishery due to precautionary DAS allocations based on underestimated LPUE in open areas. FSF also commented that, because the inshore areas are not being surveyed by NMFS, overall scallop biomass is consistently underestimated, and they requested increased survey coverage and expansion of cooperative surveys with the industry.

Response: NMFS recognizes that Framework 22 allocates open area DAS that are lower than Framework 21 allocations, but disagrees that these DAS allocations are overly precautionary. These decreases are the result of modifications to the LPUE calculation applied to the DAS model used in Framework 22. Underestimation of this increase in LPUE in previous frameworks resulted in greater-than-expected landings due to higher DAS allocations. The adjusted LPUE values have increased, resulting in lower overall DAS allocations that take into account higher effort levels. In addition, the fleet dynamics model, which predicts the level and location of fishing effort under proposed measures, has been adjusted to more accurately predict LPUE by predicting that effort will be concentrated in areas with the highest yield per day fished. Even with the decrease in DAS allocations, total landings are projected to be slightly higher than FY 2010 landings, as projected under Framework 21.

An increase in LPUE is not necessarily a reliable indicator of increased biomass and, as such, the recent increases in LPUE do not necessarily demonstrate that surveys are underestimating overall biomass. Current scallop catch rates in open areas

have been the highest on record. Although the increase is in part due to increased open area biomass as observed in surveys (the most recent survey was in May-July 2010), LPUE has increased considerably faster than survey biomass, likely due to improved efficiencies of commercial operations and the larger meat sizes that allow more pounds to be shucked per hour.

There were some survey tows conducted in inshore areas in recent years, and an estimate of the biomass from non-regularly surveyed areas was included in the last stock assessment. Estimates from the 2010 stock assessment, which were endorsed by the SARC–50 review panel, are best available science, and show that biomass was just above, and fishing mortality at, maximum sustainable yield (MSY) levels in 2009. The survey data indicate that allocations in FY 2011 need to be lower than those in place in FY 2009 in order to meet the management target F.

While the commenter may find higher DAS allocations preferable, NMFS must approve or disapprove the measure in Framework 22, and has determined that the DAS allocations proposed through Framework 22 are consistent with National Standard 1 of the MSA and are based on the best scientific information available, as required by National Standard 2.

With regards to increased cooperative surveys, Amendment 15 had made a number of adjustments to the Scallop RSA Program, including increasing the RSA quota to 1.25 M lb (567 mt), which will allow for more research projects to be funded through this process. NMFS continues to encourage industry members to participate in the RSA Program.

Comment 2: FSF stated that the timing of scallop framework actions needs to be expedited so that mid-year implementation of specifications is avoided.

Response: Although NMFS also has concerns about the timing of scallop framework actions, and agrees that it would be better for all stakeholders if these actions were developed and implemented prior to the start of the first scallop FY to which they apply, NMFS does not consider the timing problems to be a fatal flaw to Framework 22. NMFS will continue to work with the Council and the industry to avoid these delays in the future. As FSF mentioned in its comment letter, specifying third-year default measures will assist in reducing the need for confusing and cumbersome payback measures that have been included in a number of scallop frameworks, which have been incorporated due to early anticipation during the development process that these measures would be delayed past the start of the FY to which they apply.

Comment 3: A member of the United National Fishermen's Association expressed frustration that the management measures in Framework 22 are confusing, but did not clarify whether the confusion lies in the organization of the EA or the management measures themselves. The commenter also stated that Framework 22 measures should be applied in FY 2012, rather than in FY 2011.

Response: Although the commenter did not specify which management measures he felt were confusing, or offer specific suggestions to help simplify such measures, NMFS recognizes that confusion can arise when development and implementation of specification-setting frameworks are delayed past the start of the FY for which they are intended to be applied. As mentioned above, including third-year default measures will reduce future confusion and the need for burdensome payback measures in the future. NMFS disagrees that the specifications for FY 2011 should remain as they currently are and that management measures in this action should only be effective beginning in FY 2012. The roll-over FY 2010 measures currently in place do not reflect the most recent information on scallop biomass available for sustainable harvest in FY 2011. The FY 2011 allocations in Framework 22 are based on the best scientific information for FY 2011 and are more economically favorable to the scallop industry: Total fleet revenue is estimated to increase by $35 M in FY 2011 compared to the revenues anticipated under the management measures that have been in effect since March 1, 2011. Since there is no basis to disapprove the application of these measures to FY 2011, the MSA requires their implementation in 2011.

Comment 4: FSF requested that Framework 22 and Amendment 15 be implemented at the earliest time possible.

Response: NMFS recognizes that ideally Framework 22 would have been implemented on or before March 1, 2011, but for various reasons during the development and submission of this action, and because it relies on the approval of Amendment 15, which was also delayed, implementing these measures at the start of FY 2011 was not possible. Applicable laws, including the MSA and the Administrative Procedure Act (APA), impose certain time constraints to ensure there has been adequate prior notice of opportunity for public comment and adequate time to ensure that regulated members of the public can be notified of this rule. For these reasons there has been necessary delay in implementing Framework 22.

Comment 5: One commenter suggested that the scallop quotas should be reduced by 50 percent because they are too high, but provided no rationale for why the quotas should be reduced in the manner suggested.

Response: There is no known scientific basis for why such a reduction is necessary. The reasons presented by the Council and NMFS for recommending the quota allocations for FYs 2011 through 2013, which are discussed in the preambles to both the proposed rule and this rule, are based on the best scientific information available and are consistent with the control rules outlined in Amendment 15's ACL process. Scallops are currently not considered overfished or subject to overfishing. Sufficient analysis and scientific justification for NMFS' action in this final rule are contained within the supporting documents.

Comment 6: One commenter suggested that Framework 22 should have required an EIS rather than an EA, but did not provide any justification for why an EIS would be necessary.

Response: NOAA Administrative Order 216–6 (NAO 216–6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. On July 22, 2005, NOAA published a Policy Directive with guidelines for the preparation of a Finding of No Significant Impacts. In addition, the Council of Environmental Quality (CEQ) regulations at 40 CFR 1508.27 state that the significance of an action should be analyzed both in terms of ''context'' and ''intensity.'' The significance of this action was analyzed based on the NAO 216–6 criteria, the 2005 NOAA Policy Directive, and CEQ's context and intensity criteria. Based on the analysis contained in the supporting EA prepared for Framework 22, as well as the EIS for Amendment 15, NMFS determined that Framework 22 will not significantly impact the quality of the human environment and all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Therefore, NMFS finds that preparation of an EIS for this action is unnecessary.

Changes From Proposed Rule to Final Rule

In § 648.58, paragraph (e) is removed to eliminate the temporary regulations added by the June 1, 2011, emergency action to close NLS.

In § 648.59, paragraphs (b)(3) and (d)(3) are added to incorporate the updated access area coordinates for CAI and NLS, respectively. In addition, paragraph (d)(5) is revised to no longer include pay-back measures applicable to vessels if they fished in the NLS in FY 2011 prior to the implementation of Framework 22 management measures. These payback measures are no longer necessary due to the emergency action that closed the NLS prior to June 15, 2011. This closure will be continued throughout the rest of the NLS open season as part of Framework 22 measures.

In § 648.60, the text in paragraph (a)(3)(i) has been clarified to explain how vessels that end up with a total allocation of five access area trips (*i.e.,* one more trip than permitted through this final action) as a result of a trip exchange that occurred prior to the mid-year implementation of Framework 22, will relinquish one of their trips in FY 2011 to account for the unintended overage.

Other editorial and minor changes were made throughout the rule to clarify various provisions in this action. In addition, any relevant changes to the regulatory text at § 648.53 made in the Amendment 15 final rule were also incorporated in this rule.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the national standards and other provisions of the MSA and other applicable laws. The regulatory language in this final rule has incorporated, where applicable, the regulatory language in Amendment 15.

The Office of Management and Budget has determined that this rule is not significant according to Executive Order 12866.

The Assistant Administrator for Fisheries has determined that the need to implement these measures in an expedited manner in order to help achieve conservation objectives for the scallop fishery and certain fish stocks, as well as threatened and endangered sea turtles, constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness.

If there is a 30-day delay in implementing the measures in Framework 22, the scallop fleet will continue under the current access area schedule, as well as access area trip, DAS, IFQ, RSA and observer set-aside allocations. The DAS allocations are higher than the measures in Framework 22, which were developed to reflect an updated estimate of the annual catch that can be harvested without resulting in overfishing. Accordingly, a delay in effectiveness risks creating a race to fish in advance of this rule's measures, and vessel owners and operators have the potential of exceeding the catch levels specified in Framework 22 for FY 2011. Allocations in FY 2011 need to be lower than those in place in FY 2010 in order to meet the management target F. Estimates from the 2010 stock assessment, which were endorsed by the SARC–50 review panel, are best available science, and show that biomass was just above, and fishing mortality was at, MSY levels in 2009. In addition, actual F has been higher than projected in FYs 2008–2010, a situation which was addressed in the DAS model used to calculate the Framework 22 allocations. Further continuation of the inconsistent FY 2010 management measures increases the risk that the actual F will exceed the target level upon which Framework 22 management measures are based. Constraining the implementation of Framework 22 by instituting a 30-day delay in effectiveness would be contrary to the public interest because continuing this trend in higher-than-projected F could result in overfishing and future decreases in allowable harvest. Current scallop catch rates in open areas have been the highest on record, and vessels may continue to fish beyond their Framework 22 DAS allocations until this action is effective because they are limited in where else they can fish.

In addition, Framework 22 includes management measures to minimize fishery interaction with threatened and endangered sea turtles and prevent overfishing. Specifically, Framework 22 includes a measure that specifies vessels may take only one access area trip in HC and Delmarva (combined) between June 15 and October 31, 2011. This limitation complies with one of the RPMs in the most recent Biological Opinion completed for the scallop fishery. The Biological Opinion examined fishery interactions with threatened and endangered sea turtles and specified RPMs to minimize the impacts on sea turtles. If implementation is delayed further beyond June 15, 2011, the measures from last year will continue (*i.e.,* up to two trips in Delmarva or the ETAA combined). Although many vessels have already utilized their Delmarva trip and it may be unlikely that vessels will fish in the ETAA, there is still a potential that a delay in effectiveness could compromise sea turtle conservation benefits during this short window.

Expediting the implementation of Framework 22 measures will also have greater public benefit because enacting the allocations of IFQ, RSA, and access area trips would have positive impacts on the economics of the fishery. Currently, with biomass in the ETAA not producing valuable trips and the NLS closed through emergency action, most vessels have already fished their Delmarva access area trips and have no other access areas available from which to harvest scallops. Framework 22 will open up three additional access areas for vessels (*i.e.,* HC, CAI, and CAII) and take pressure off of vessel owners/operators from using more DAS than allocated in FY 2011, which would result in equivalent reductions of their DAS allocations in FY 2012 to account for their overages. In addition, LAGC IFQ vessels will be able to take advantage of their increased IFQ allocations. Additionally, researchers funded through the Scallop RSA Program are unable to harvest the FY 2011 RSA in CAI, CAII, and HC until those access areas are opened by Framework 22. These RSA allocations provide funding for research. Many of the surveys that will be funded under the FY 2011 RSA Program optimally need to occur during this time. A 30-day delay in effectiveness would slow down the grant process by not providing researchers with their RSA scallop allocations, which will undermine the ability of researchers to complete their research projects and potentially hinder the quality of their research.

NMFS was unable to incorporate the 30-day delay in effectiveness into the timeline for Framework 22 rulemaking due to the Council's January 2011, submission of Amendment 15 and March 2011, final submission of Framework 22, which was more than 3 weeks after the March 1 start of the 2011 scallop FY. However, NMFS must also consider the need of the scallop industry to have prior notice in order to make the necessary preparations to begin fishing under these finalized measures (*e.g.,* time to notify the observer program; collect the necessary equipment and notify crew; plan for the steam time to get to an area once it opens; or return from a trip started prior to the effective date of this action, should the vessel owner/operator want to fish in a more preferable area during this time of year). For these reasons, NMFS has determined that implementing these measures with a shorter 10-day delay in effectiveness would have the greatest public benefit.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of Framework 22 in this final rule. The

FRFA consists of and incorporates the IRFA, the relevant analyses and summaries thereof prepared for Framework 22, and the following discussion. This FRFA describes the economic impact that this final rule, along with non-adopted alternatives, will have on small entities. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

Statement of Objective and Need

This action sets the management measures and specifications for the Atlantic sea scallop fishery for FY 2011 and FY 2012, with FY 2013 default measures. A description of the action, why it is being considered, analysis of proposed and final measures considered for Framework 22, and the legal basis for this action are contained in Framework 22 and the preambles of the proposed and final rules and are not repeated here.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The RFA defines a small business entity in any fish-harvesting or hatchery business as a firm that is independently owned and operated and not dominant in its field of operation (including its affiliates), with receipts of up to $4 million annually. The vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than $4 million according to the dealer's data for FYs 1994 to 2009. In FY 2009, total average revenue per full-time scallop vessel was just over $1 million, and total average scallop revenue per general category vessel was just under $80,000. The IRFA for this and prior Scallop FMP actions does not consider individual entity ownership of multiple vessels. More information about common ownership is being gathered, but the effects of common ownership relative to small versus large entities under the RFA is still unclear and will be addressed in future analyses.

The Office of Advocacy at the Small Business Association (SBA) suggests two criteria to consider in determining the significance of regulatory impacts; namely, disproportionality and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of ''small entity''), not the difference between segments of small entities. Framework 22 is not expected to have significant regulatory impacts on the basis of the disproportionality criterion, because all entities are considered to be small entities in the scallop fishery and, therefore, the action would not place a substantial number of small entities at a significant competitive disadvantage relative to large entities. A summary of the economic impacts relative to the profitability criterion is provided below under ''Economic Impacts of Proposed Measures and Alternatives.''

The measures contained in this final rule affect vessels with LA and LAGC scallop permits. The Framework 22 document from the Council provides extensive information on the number and size of vessels and small businesses that will be affected by these regulations, by port and state. There were 313 vessels that obtained full-time LA permits in 2010, including 250 dredge, 52 small-dredge and 11 scallop trawl permits. In the same year, there were also 34 part-time LA permits in the sea scallop fishery. No vessels were issued occasional scallop permits. By the start of FY 2010, the first year of the LAGC IFQ program, 362 IFQ permits (including 40 IFQ permits issued to vessels with a LA scallop permit), 127 NGOM, and 294 incidental catch permits were issued. Since all scallop permits are limited access, vessel owners would only cancel permits if they decide to stop fishing for scallops on the permitted vessel permanently or if they transfer IFQ to another IFQ vessel and permanently relinquish the vessel's scallop permit. This is likely to be infrequent due to the value of retaining the permit. As such, the number of scallop permits could decline over time, but would likely be by fewer than 10 permits per year.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

No public comments were received in response to the IRFA summary in the proposed rule.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains no new collection-of-information, reporting, and recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal law.

Description of the Steps the Agency has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The aggregate economic impacts of these final measures, including the open area DAS and access area allocations for LA vessels and ACLs for the LAGC fishery, are expected to be positive in both in the short-term (FYs 2011–2012) and the long-term (FYs 2011–2022) compared to the No Action alternative and all other alternatives considered. Estimated fleet revenues under the adopted action in FY 2011 are slightly lower than the average fleet revenues in FYs 2009 and 2010. In FY 2012, revenues are expected to exceed the average revenues in FYs 2009 and 2010. The adopted action is not expected to have short-term adverse impacts on the revenues and profits of the scallop vessels compared to recent levels. The impact of four allocation alternatives were evaluated in Framework 22: One alternative proposing a new closure in the Great South Channel (GSC; the ''GSC closure'' alternative); one alternative with full-time ''split fleet'' allocations and no new closure (the proposed action); one alternative with identical access area allocations (i.e., all full-time vessels are allocated access into the same areas) (the ''identical fleet allocation'' alternative) and the No Action alternative. With the exception of the No Action alternative, the total number of access area trips allocated to LA vessels was the same for all alternatives.

The definition of ''No Action'' refers to the continuation of the allocations that are specified in the current regulations. However, because of the restrictions set forth by the current GB rotational area schedules, which determine outside of annual allocations when an access area will be opened or closed to fishing in a given FY, the No Action alternative does not result in the same allocations or revenues as in FY 2010. Rather, No Action would result in one less access area trip in FY 2012 compared to FY 2010 due to the closure of NLS (*i.e.,* the current regulations close the NLS in FY 2012). Note that although the current regulations now include a suspension of the opening of NLS in FY 2011, due to the emergency

action put in place on June 1, 2011, this area could conceivably open under No Action after 186 days and vessels could potentially fish their NLS allocations during the last 2 months that area is open in FY 2011. As a result, the No Action alternative is still analyzed based on four access area trips in FY 2011. In addition, No Action would allocate two trips to a less productive area (i.e., the ETAA) in FY 2011 and beyond. Due to these restrictions associated with No Action, the fishing effort in the access areas and landings overall is expected to be significantly lower compared to actual levels in FYs 2009 and 2010. As a result, the No Action alternative would result in significantly lower revenues ($364.5 M in FY 2011 and $290.2 M in FY 2012) compared to the actual revenues in FY 2009 ($379.5 M) and in FY 2010 ($431 M). From the perspective of the impacts on the economy and of the participants in the fishery, a baseline that would reflect potential economic impacts relative to the recent levels of allocations would be a more useful comparison. For this purpose, a Status Quo scenario was also incorporated into the economic analysis. This scenario allocated vessels exactly the same amount of access area trips and DAS in FYs 2011 and 2012 as they had the opportunity to take in FY 2010, resulting in projected revenues ($433.1 M in FY 2011) that are very similar to the estimated revenues for FY 2010. Note that the Status Quo alternative is used here for analytical purposes in the economic impact analysis of Framework 22's allocations alternatives, but was not actually considered by the Council, because it is based on an infeasible scenario that would increase the scallop fishing mortality above sustainable levels, resulting in reduced scallop yield and revenues in the long-term.

Framework 22 will be implemented mid-year, roughly 4 months after the start of FY 2011 (March 1, 2011). In the interim, the FY 2010 management measures and allocations have been extended into FY 2011 until this final rule is implemented. These current roll-over measures include open area LA allocation that are higher than those specified under Framework 22 (*i.e.,* 38 DAS per full-time LA vessel, 15 DAS per part-time vessel, and 3 DAS per occasional vessel). Additionally, although the total number of access area trips allocated to LA vessels remains the same under Framework 22 as what was allocated for the start of FY 2011 (*i.e.,* four trips), the access areas from where these trips can be taken will differ. The Framework 22 document presented by the Council included a number of provisions to account for the inconsistencies between allocations in effect at the start of FY 2011 and those that will be implemented by this rule. Generally, any overages incurred in FY 2011 will result in a pound-for-pound (or DAS-for-DAS) deduction in FY 2012 to account for excess landings and fishing effort not accounted for in the Framework 22 biomass projections and resulting annual allocations. As a result, vessels that choose to exceed the FY 2011 allocations in Framework 22 would have slightly higher revenues than the estimated fleet average in FY 2011, resulting in positive short-term impact on those individual vessels in FY 2011. Subsequently, those vessels receive reduced individual allocations in FY 2012 to account for the FY 2011 overage incurred by the vessel. This reduction will result in slightly lower revenues than the estimated average in FY 2012, resulting in a negative short-term impact on those vessels in FY 2012. However, over the long-term, the overage provisions proposed in Framework 22 are expected to reduce the negative impacts of overfishing in FY 2011 on the scallop resource. Therefore, these measures will have positive fleet-wide impacts on landings and revenues over the long term. No other alternatives were considered in this action because these payback measures are necessary to ensure that the scallop fleet does not exceed the harvest allocations specified in this action due to its mid-year implementation. In the future, the inclusion of third-year default measures in this action and in future biennial framework adjustments, as specified in Amendment 15, will reduce and/or eliminate the need for these types of payback measures. These default measures are also expected to have potentially positive economic impacts. If resource conditions turn out to be less favorable in FY 2013 than suggested by the current biological projections, and the next framework is delayed, this measure will allocate only 26 DAS, rather than 35 DAS, to prevent potentially negative impacts on the resource, including impacts on scallop yield and subsequent impacts on scallop prices.

Economic Impacts of the Final Action

The following describes all of the alternatives considered by the Council.

1. Allocations for the LA and LAGC Scallop Fleets—Aggregate Impacts

The adopted open area DAS allocations are expected to prevent overfishing in open areas. This final rule implements the following vessel-specific DAS allocations for FYs 2011 and 2012: Full-time vessels will be allocated 32 and 34 DAS, respectively; part-time vessels will be allocated 13 and 14 DAS, respectively; and occasional vessels will receive 3 DAS for each FY. Additionally, full-time vessels will receive a total of four access area trips, part-time vessels will receive two access area trips, and occasional vessels will receive one access area trip.

The Framework 22 analysis of the fleet-wide aggregate economic impacts indicates that the adopted alternative and all other alternatives will have positive economic impacts on the revenues and profits of the scallop vessels in the short-term (FYs 2011 and 2012), compared with the No Action alternative. Total fleet revenue under the adopted action is estimated at $399.1 million in FY 2011 and $428.4 million in FY 2012. Additionally, net revenues per vessel (i.e., gross revenues minus trip costs, used as a proxy for profits) are estimated to be $1,014,659 and $1,089,108 in FY 2011 and FY 2012, respectively. Compared with No Action fleet revenues ($364.5 M in FY 2011 and $290.1 M in FY 2012), the adopted action will result in increases in fleet revenues of 9.6 percent and 47.6 percent in FYs 2011 and 2012, respectively; the ''GSC closure'' alternative would result in increases in revenues by 2.2 percent and 44.9 percent in FYs 2011 and 2012, respectively; and the ''identical fleet allocation'' alternative would result in increases in revenues by 10.3 percent and 44.3 percent in FYs 2011 and 2012, respectively. In terms of net revenues per vessel ($917,452 in FY 2011 and $732,848 M in FY 2012 for No Action), the adopted action will result in higher vessel net revenues (10.6 percent in FY 2011 and 48.6 percent in FY 2012). Vessel net revenues would be higher under the ''GSC closure'' and ''identical fleet allocation'' alternatives, as well, ranging between 3.1–11.3 percent higher in FY 2011 and 45.2–45.5 percent higher in FY 2012. In both the short- and long-term, the adopted action will result in larger cumulative fleet and vessel net revenues than both the ''GSC closure'' alternative and the ''identical fleet allocation.'' The adopted action's fleet revenues are estimated to exceed the revenues for the ''identical fleet allocation'' alternative by $6.5 M and $53 M in the short- and long-term, respectively. The adopted action's revenues are expected to exceed those for the ''GSC closure'' alternative by an even greater amount: $33.5 M and $98.9 M more in the short- and long-

term, respectively. Furthermore, the adopted action will result in a more constant stream of landings compared to the other two alternatives, providing stability in business. There are no alternatives that would generate higher economic benefits for the participants of the scallop fishery.

Compared to the Status Quo, the adopted action will result in gross fleet revenues about $47.9 M lower in the short-term, resulting in estimates of gross revenue per vessel to be 7.9 percent and 4.1 percent, less than those under Status Quo in FY 2011 and FY 2012, respectively. These decreases in fleet and vessel revenues compared to those estimated under Status Quo are because the Status Quo alternative does not take projected scallop biomass levels into account: Although landings and revenues are higher in the short-term under the Status Quo scenario, by setting future allocations based on an F that exceeds sustainable levels, the Status Quo reduces yield and revenues in the long-term. From FYs 2011–2022, the adopted action will have positive economic impacts compared to Status Quo, exceeding Status Quo fleet revenues by $19.8 M. Over the medium-term (FYs 2011–2015), the adopted action will result in higher revenues per vessel compared to the Status Quo—5.8 percent in FY 2013 and 3.7 percent in FYs 2014 and 2015—thus offsetting the decreases in FYs 2011 and 2012. Because the cumulative value of the scallop net revenue per vessel will be only marginally lower (0.1 percent) in the medium-term compared to the Status Quo values, the adopted action will not have significant impacts for the scallop vessels compared to Status Quo levels.

The adopted action will have positive economic benefits in both the short and long term for the LAGC fishery starting in FY 2011, as the LAGC ACL will increase compared to No Action allocations. Under the adopted allocations, LAGC vessels will be allocated 5 percent of the total ACL and the LA vessels with the IFQ permits will be allocated 0.5-percent of the total ACL. The positive short- and long-term economic impacts of these allocations for the LAGC vessels, compared to the No Action alternative, result from the higher allocation of scallops to the LAGC fleets (1.3 percent higher in FY 2011 and 2.9 percent higher in FY 2012) than those allocated under No Action. In addition, compared to FY 2010 revenues, which was the first year that the LAGC IFQ Program was implemented, the revenues of LAGC vessels will be higher under the adopted action. There are no alternatives that would generate higher economic benefits for the participants of the scallop fishery. In fact, because the LAGC allocations are derived from the ACL, the values are identical across all alternatives considered, with the exception of No Action.

In summary, this action will not have a considerable adverse impact on the net revenues and profits on the LA and LAGC scallop fleets. Therefore, the adopted action is not expected to have significant economic impacts on the viability of these vessels, especially in a highly profitable industry like the scallop fishery.

2. Access Area Trip Allocations and Use of Split-Fleet Trips Allocated Through a Lottery System

The adopted action to allocate split-fleet trips into access areas with biomass levels not large enough to support a full trip will increase landings, revenues, and total economic benefits to the fishery. The administration of the random allocation process is expected to have positive economic impacts on the fishermen by providing flexibility for the vessels to trade access area trips. With the exception of the No Action alternative, all alternatives considered the same number of access area trips. There were no other alternatives considered that would generate higher economic benefits for the participants of the scallop fishery.

3. Open Area DAS Adjustment if Access Area YTF TAC Is Attained

This action maintains provisions that allocate additional open area DAS if an access area closes due to the attainment of the scallop YTF TAC for unused access area trips (*i.e.,* fully unused trips and compensation trips). This allocation is a continuation of current measures and will have the same impacts as the No Action alternative. This conversion helps to minimize lost catch and revenue for affected vessels if CAI and CAII and/or NLS close due to the full harvest of YTF quota. As a result, this measure will have positive economic impacts on scallop vessels, although the scallop pounds per trip could be lower than the allocated pounds for GB and/or SNE/MA access area trips due to proration to assure that the measure is conservation neutral. There were no alternatives considered to address this issue that would generate higher economic benefits for the participants of the scallop fishery.

4. RSA and Observer Set-Aside TACs

This action will allocate 1 percent of the ABC to the industry-funded observer set-aside program, and will set aside 1.25 M lb (567 mt) from the ABC for the RSA program, based on measures in Amendment 15. These set-asides are expected to have indirect economic benefits for the scallop fishery by improving scallop information and data made possible by research and the observer program. Although allocating a higher observer set-aside percentage or higher RSA allocation could result in higher indirect benefits to the scallop fleet by increasing available funds for research and the observer program, these set-aside increases could also decrease direct economic benefits to the fishery by reducing revenues, and no such alternatives were considered in this action.

5. NGOM TAC

This action specifies a 70,000-lb (31,751-kg) TAC for the NGOM. This is the same TAC as the No Action alternative. Thus, the action will not have additional economic impacts on the participants of the NGOM fishery. The NGOM TAC has been specified at this level since FY 2008, and the fishery has harvested less than 15 percent of the TAC in each FY; therefore, the TAC has no negative economic impacts. There are no alternatives that would generate higher benefits for NGOM scallop vessels. The alternative for setting the NGOM TAC at 31,100 lb (14,107 kg) is expected to reduce the chance of excess fishing in Federal waters in the NGOM management area, but could result in negative impacts on the participants of the NGOM fishery if landings from NGOM-permitted vessels fishing in state waters lead to the closure of the NGOM management area.

6. Measures To Minimize the Impacts of Incidental Take of Sea Turtles

This action limits the maximum number of trips that can be taken in the Mid-Atlantic areas from June 15 to October 31. Because fishing effort is shifted to a relatively less productive season, total fleet trip costs are expected to increase slightly (*i.e.,* less than 0.1 percent) due to reduced scallop catch rates. Since there is no change in the scallop possession limit, the trips that are shifted from this season are expected to be taken outside of this time period, without a loss in total revenue, as long as this measure, as expected, does not have a negative impact on prices. No other alternatives considered would generate higher benefits for the scallop vessels, other than the No Action alternative, which would continue the FY 2010 measures implemented by Framework 21 (an access area trip-restriction of two trips (or 36,000 lb; 16,329 kg) between June 15 and August

31 in the ETAA and Delmarva, as well as seasonal closures in Delmarva and the ETAA during September and October). Because the basis for No Action is the regulations that match the FY 2010 allocations implemented through Framework 21, the No Action alternative would not account for the opening of HC and would not take the ETAA into account if it were to revert to an open area, thus it would only reduce effort in Delmarva. As a result, the No Action alternative would likely not comply with the relevant RPM and T/Cs of the Biological Opinion and thus, it was not considered by the Council. The adopted action is expected to minimize the effort shift from the given time period compared to the other action alternatives considered by the Council; thus, there are no other alternatives that would generate higher benefits for the scallop vessels. In addition, this alternative included a caveat that will allow full-time vessels to fish up to two trips in the Mid-Atlantic if they exchange trips with other vessels so that they have a total four access area trips into the Mid-Atlantic. This provision will provide flexibility to vessel owners and will mitigate any possible distributional impacts this action would have had on vessels.

7. Elimination of the GB Closed Area Rotation Schedule

The elimination of the GB rotation schedule that indicates the opening and closing of access areas in the regulations will reduce the public's confusion and administrative burden. Instead, access area schedules will be based solely on survey results and available exploitable biomass as assessed by the Scallop PDT and the SSC. These schedules will be approved by the Council and implemented biannually through the framework adjustment process. This action will improve the management of the scallop resource, with positive impacts on the scallop yield and on economic benefits from the scallop fishery. There are no alternatives that would generate higher benefits for the scallop vessels.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guild (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the scallop fishery. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 14, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, paragraphs (i)(2)(vi)(F) and (G) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(2) * * *

(vi) * * *

(F) Unless specified in paragraph (i)(2)(vi)(F)(*1*) of this section, a full-time vessel shall not fish for, possess, or retain more than a combined total of 18,000 lb (8,165 kg; the equivalent of one full-time access area trip) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

(*1*) If the owner of a full-time vessel has exchanged a trip(s) with another full-time vessel owner(s), as specified in § 648.60(a)(3)(ii), so that the vessel has a total access area trip allocation of four combined trips into the Delmarva and Hudson Canyon Access Areas (*e.g.,* two Hudson Canyon trip and two Delmarva trips; one Hudson Canyon trip and three Delmarva trips, three Hudson Canyon trips and one Delmarva trip; no Hudson Canyon trips and four Delmarva trips; or four Hudson Canyon trips and no Delmarva trips) that vessel must not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg; the equivalent of two full-time access area trips) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

(*2*) [Reserved]

(G) Part-time vessels shall not fish for, possess, or retain more than a combined total of 14,400 lb (6,532 kg; the equivalent of one part-time access area trip) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

* * * * *

■ 3. In § 648.53:

■ a. The section heading is revised;

■ b. Paragraph (a), the introductory text to paragraph (b), paragraphs (b)(1), (b)(4), (b)(5), (c), (d), (g), (h)(2)(iii), (h)(3)(i)(A), (h)(3)(i)(B), (h)(3)(i)(C), (h)(3)(ii)(A), the introductory text to paragraph (h)(4), and paragraphs (h)(5)(ii), (h)(5)(iii), and (h)(5)(iv) are revised;

■ c. Paragraphs (h)(2)(v) and (h)(2)(vi) are revised; and
■ d. Paragraph (b)(2) is removed and reserved.

The revisions and additions read as follows:

§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).

(a) *Scallop fishery ABC.* The ABC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55 and is equal to the overall scallop fishery ACL. The ABC/ACL shall be divided as sub-ACLs between limited access vessels, limited access vessels that are fishing under a limited access general category permit, and limited access general category vessels as specified in paragraphs (a)(3) and (a)(4) of this section, after deducting the scallop incidental catch target TAC specified in paragraph (a)(2) of this section, observer set-aside specified in paragraph (g)(1) of this section, and research set-aside specified in Section 648.56(d). The ABC/ACL for the 2013 fishing year is subject to change through a future framework adjustment.

(1) ABC/ACL for fishing years 2011 through 2013 shall be:

(i) *2011:* 27,269 mt.

(ii) *2012:* 28,961 mt.

(iii) *2013:* 28,700 mt.

(2) *Scallop incidental catch target TAC.* The incidental catch target TAC for vessels with incidental catch scallop permits is 50,000 lb (22.7 mt) for fishing years 2011, 2012, and 2013.

(3) *Limited access fleet sub-ACL and ACT.* The limited access scallop fishery shall be allocated 94.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). ACT for the limited access scallop fishery shall be established through the framework adjustment process described in § 648.55. DAS specified in paragraph (b) of this section shall be based on the ACTs specified in paragraph (a)(3)(ii) of this section. The limited access fleet sub-ACL and ACT for the 2013 fishing year are subject to change through a future framework adjustment.

(i) The limited access fishery sub-ACLs for fishing years 2011 through 2013 are:

(A) *2011:* 24,954 mt.

(B) *2012:* 26,537 mt.

(C) *2013:* 26,293 mt.

(ii) The limited access fishery ACTs for fishing years 2011 through 2013 are:

(A) *2011:* 21,431 mt.

(B) *2012:* 23,546 mt.

(C) *2013:* 19,688 mt.

(4) *LAGC fleet sub-ACL.* The sub-ACL for the LAGC IFQ fishery shall be equal to 5.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC IFQ fishery ACT shall be equal to the LAGC IFQ fishery's ACL. The ACL for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The ACL for the LAGC IFQ fishery for vessels issued only both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC ACLs for the 2013 fishing year are default allocations and are subject to change through a future framework adjustment.

(i) The ACLs for fishing years 2011 through 2013 for LAGC IFQ vessels without a limited access scallop permit are:

(A) *2011:* 1,320 mt.

(B) *2012:* 1,404 mt.

(C) *2013:* 1,391 mt.

(ii) The ACLs for fishing years 2011 through 2013 for vessels issued both a LAGC and a limited access scallop permits are:

(A) *2011:* 132 mt.

(B) *2012:* 140 mt.

(C) *2013:* 139 mt.

(b) *DAS allocations.* DAS allocations for limited access scallop trips in all areas other than those specified in § 648.59 shall be specified through the framework adjustment process, as specified in § 648.55, using the ACT specified in paragraph (a)(3)(ii) of this section. A vessel's DAS shall be determined and specified in paragraph (b)(4) of this section by dividing the total DAS specified in the framework adjustment by the landings per unit effort (LPUE) specified in paragraph (b)(1) of this section, then dividing by the total number of vessels in the fleet.

(1) *Landings per unit effort (LPUE).* LPUE is an estimate of the average amount of scallops, in pounds, that the limited access scallop fleet lands per DAS fished. The estimated LPUE is the average LPUE for all limited access scallop vessels fishing under DAS, and shall be used to calculate DAS specified in paragraph (b)(4) of this section, the DAS reduction for the AM specified in paragraph (b)(4)(ii) of this section, and the observer set-aside DAS allocation specified in paragraph (g)(1) of this section. LPUE shall be:

(i) 2011 fishing year: 2,441 lb/DAS.

(ii) 2012 fishing year: 2,662 lb/DAS.

(iii) 2013 fishing year: 2,676 lb/DAS.

* * * * *

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(4) (full-time, part-time, or occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category, excluding carryover DAS in accordance with paragraph (d) of this section. DAS allocations shall be determined by distributing the portion of ACT specified in paragraph (a)(3)(ii), as reduced by access area allocations specified in § 648.59, and dividing that amount among vessels in the form of DAS calculated by applying estimates of open area LPUE specified in paragraph (b)(1) of this section. Allocation for part-time and occasional scallop vessels shall be equal to 40 percent and 8.33 percent of the full-time DAS allocations, respectively. DAS allocations for the 2013 fishing year are default allocations and are subject to change through a future framework adjustment. The annual open area DAS allocations for each category of vessel for the fishing years indicated are as follows:

SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2011	2012	2013
Full-Time	32	34	26
Part-Time	13	14	11
Occasional ..	3	3	3

(i) If, prior to the implementation of Framework 22, a limited access vessel uses more open area DAS in the 2011 fishing year than specified in this section, such vessel shall have the DAS used in excess of the 2012 fishing year allocation specified in this paragraph (b)(4) deducted from its fishing year 2012 open area DAS allocation.

(ii) *Accountability measures (AM).* Unless the limited access AM exception is implemented in accordance with the provision specified in paragraph (b)(4)(iii) of this section, if the ACL specified in paragraph (a)(3)(i) of this section is exceeded for the applicable fishing year, the DAS specified in paragraph (b)(4) of this section for each limited access vessel shall be reduced by an amount equal to the amount of landings in excess of the ACL divided

by the applicable LPUE for the fishing year in which the AM will apply as specified in paragraph (b)(1) of this section, then divided by the number of scallop vessels eligible to be issued a full-time limited access scallop permit. For example, assuming a 300,000-lb (136-mt) overage of the ACL in 2011, an open area LPUE of 2,500 lb (1.13 mt) per DAS in 2012, and 313 full-time vessels, each full-time vessel's DAS would be reduced by 0.38 DAS (300,000 lb (136 mt)/2,500 lb (1.13 mt) per DAS = 120 lb (0.05 mt) per DAS/313 vessels = 0.38 DAS per vessel). Deductions in DAS for part-time and occasional scallop vessels shall be equal to 40 percent and 8.33 percent of the full-time DAS deduction, respectively, as calculated pursuant to this paragraph (b)(4)(ii). The AM shall take effect in the fishing year following the fishing year in which the overage occurred. For example, landings in excess of the ACL in fishing year 2011 would result in the DAS reduction AM in fishing year 2012. If the AM takes effect, and a limited access vessel uses more open area DAS in the fishing year in which the AM is applied, the vessel shall have the DAS used in excess of the allocation after applying the AM deducted from its open area DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in 2011 uses all 32 DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in 2012 would be reduced by 1 DAS.

(iii) *Limited access AM exception*—If NMFS determines, in accordance with paragraph (b)(4)(ii) of this section, that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.28, the AM specified in paragraph (b)(4)(ii) of this section shall not take effect. The fishing mortality rate of 0.28 is the fishing mortality that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.32.

(iv) *Limited access fleet AM and exception provision timing.* The Regional Administrator shall determine whether the limited access fleet exceeded its ACL specified in paragraph (a)(3)(i) of this section by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council (Council) of the determination of whether or not the ACL for the limited access fleet was exceeded, and the amount of landings in excess of the ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.28. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

(v) The Elephant Trunk Access Area shall change to an open area starting in fishing year 2011. For reference, the Elephant Trunk Access Area was defined by straight lines connecting the following points in the order stated (copies of a chart depicting the area previously known as the Elephant Trunk Access Area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ETAA1	38°50′ N	74°20′ W
ETAA2	38°10′ N	74°20′ W
ETAA3	38°10′ N	73°30′ W
ETAA4	38°50′ N	73°30′ W
ETAA1	38°50′ N	74°20′ W

(vi) If, prior to the implementation of Framework 22, a vessel lands all or part of an Elephant Trunk Access Area trip that was allocated at the start of the 2011 fishing year, any pounds landed from that declared Elephant Trunk Access Area trip would be converted to DAS and deducted from the vessel's open area DAS allocations in fishing year 2012. This DAS deduction would be equal to the scallop fishing mortality resulting from the open area DAS allocation. For example, if a full-time vessel lands the full 18,000-lb (8,165-kg) possession limit from an Elephant Trunk Access Area trip allocated at the start of the 2011 fishing year, the pounds landed would be converted to DAS and deducted from the vessel's 2012 fishing year DAS allocation as follows: The 18,000 lb (8,165-kg) would first be multiplied by the estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimated open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 7.4 DAS ((18,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 7.4 DAS). This amount would be deducted from that vessel's 2012 fishing year (i.e., 34 DAS minus 7.4 DAS), resulting in a total 2012 fishing year DAS allocation of 26.6 DAS. Similarly, Part-time and occasional vessels shall receive deductions of 5.9 DAS and 2.5 DAS, respectively, based on their respective possession limits, for landing their full trip possession limits from the area formerly known as the Elephant Trunk Access Area. If a vessel only lands a portion of its full possession limit, the applicable DAS reduction shall be proportional to those landings. For example, if a full-time vessel lands 9,000 lb (4,082 kg) during a declared Elephant Trunk Access Area trip, that vessel's fishing year 2012 DAS allocation would be reduced by 3.7 DAS (i.e., half of the DAS that would be deducted for a full trip).

(vii) If, prior to the implementation of Framework 22, a vessel owner exchanges an Elephant Trunk Access Area trip for another access area trip as specified in § 648.60(a)(3)(ii) in fishing year 2011, the vessel that receives an additional Elephant Trunk Access Area trip would receive a DAS credit of 7.4 DAS in FY 2011, resulting in a total fishing year 2011 DAS allocation of 39.4 DAS (32 DAS plus 7.4 DAS). This DAS credit from unused Elephant Trunk Access Area trip gained through a trip exchange is based on a full-time vessel's 18,000-lb (8,165-kg) possession limit and is calculated by using the formula specified in paragraph (b)(4)(vi) but the DAS conversion is applied as a DAS credit in the 2011 fishing year, rather than as a DAS deduction in fishing year 2012. Similarly, using the same calculation with a 14,400-lb (6,532-kg) possession limit, part-time vessels would receive a credit of 5.9 DAS if the vessel owner received an additional Elephant Trunk Access Area trip through a trip exchange in the interim between the start of the 2011 fishing year and the implementation of Framework 22 and did not use it. If a vessel fishes any part of an Elephant Trunk Access Area trip gained through a trip exchange, those landings would be deducted from any DAS credit applied to the 2011 fishing year. For example, if a full-time vessel lands 10,000 lb (4,536 kg) from an Elephant Trunk Access Area trip gained through a trip exchange, the pounds landed would be converted to DAS and deducted from the trip-exchange credit as follows: The 10,000 lb (4,536 kg) would first be multiplied by the

estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimate open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 4.1 DAS ((10,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 4.1 DAS). Thus, this vessel would receive a reduced DAS credit in FY 2011 to account for the Elephant Trunk Access Area trip exchange of 3.3 DAS (7.4 DAS − 4.1 DAS = 3.7 DAS).

(5) *Additional open area DAS.* (i) When Closed Area I, Closed Area II, and/or the Nantucket Lightship Access Areas close due to the yellowtail flounder TAC, for each remaining complete trip in each of these Access Areas, a full-time, part-time, or occasional vessel may fish an additional DAS in open areas during the same fishing year. Part-time and occasional vessel shall only receive additional DAS if there are no other access areas available in which to take an access area trip. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). The Access Area DAS trip conversion for fishing years 2011 and 2013 are specified in paragraph (b)(5)(ii) of this section.

(ii) *Access Area Trip Conversion to Open Area DAS.*

ACCESS AREA TRIP CONVERSION TO OPEN AREA DAS

Permit category	FY	CAI	CAII	NLAA
Full-Time	2011	4.3	5.7	N/A
	2012	4.4	5.4	4.3
	2013	N/A	5.4	4.9
Part-Time	2011	3.4	4.5	N/A
	2012	3.6	4.3	3.4
	2013	N/A	4.3	3.9
Occasional	2011	1.4	1.9	N/A
	2012	1.5	1.8	1.4
	2013	N/A	1.8	1.6

(iii) If a vessel has unused broken trip compensation trip(s), as specified in § 648.60(c), when Closed Area I, Closed Area II, and/or Nantucket Lightship Access Areas close due to the yellowtail flounder TAC, it will be issued additional open area DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Nantucket Lightship Access Area compensation trip (half of the possession limit) at the time of a Nantucket Lightship Access Area yellowtail flounder TAC closure in FY 2012, the vessel will be allocated 2.15 DAS (half of 4.3 DAS).

* * * * *

(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 3 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS before the beginning of the third year of each biennial adjustment, the third-year measures specified in the biennial framework adjustment shall remain in effect for the next fishing year. If a new biennial or other framework adjustment is not implemented by NMFS by the conclusion of the third year, the management measures from that third year would remain in place until a new action is implemented. The Council may also recommend adjustments to DAS allocations or other measures through a framework adjustment at any time.

(d) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused open area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total open area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in open areas. Carry-over DAS are accounted for in setting the ACT for the limited access fleet, as specified in paragraph (a)(3)(ii) of this section. Therefore, if carry-over DAS result or contribute to an overage of the ACL, the limited access fleet AM specified in paragraph (b)(4)(ii) of this section would still apply, provided the AM exception specified in paragraph (b)(4)(iii) of this section is not invoked.

* * * * *

(g) *Set-asides for observer coverage.* (1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL specified in paragraph (a)(1) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. The total TAC for observer set aside is 273 mt in fishing year 2011, 290 mt in fishing year 2012, and 287 mt in fishing year 2013. This 1 percent is divided proportionally into access areas and open areas, as specified in § 648.60(d)(1) and paragraph (g)(2) of this section, respectively. The total observer set-aside TAC specified for fishing year 2013 is a default allocation and is subject to change through a future framework adjustment

(2) *DAS set-aside for observer coverage.* For vessels assigned to take an at-sea observer on a trip other than an Access Area Program trip, the open-area observer set-aside TACs are 139 mt, 161 mt, and 136 mt for fishing years 2011, 2012, and 2013, respectively. The DAS set-aside shall be determined by dividing these amounts by the LPUE specified in paragraph (b)(1)(i) of this section for each specific fishing year. The DAS set-aside for observer coverage is 137 DAS for the 2011 fishing year, 133 DAS for the 2012 fishing year, and 112 DAS for the 2013 fishing year. A vessel carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate, based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. This DAS adjustment factor may also be changed during the fishing year if fishery conditions warrant such a change. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing

year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived if set-aside is not available.

(h) * * *

(2) * * *

(iii) *Contribution percentage.* A vessel's contribution percentage shall be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued an IFQ scallop permit. Continuing the example in paragraph (h)(1)(ii)(D) of this section, the sum of the contribution factors for 380 IFQ scallop vessels is estimated for the purpose of this example to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel is 1.45 percent (60,687 lb (27,527 kg)/4.18 million lb (1,896 mt) = 1.45 percent). The contribution percentage for a vessel that is issued an IFQ scallop permit and whose owner has permanently transferred all of its IFQ to another IFQ vessel, as specified in paragraph (h)(5)(ii) of this section, shall be equal to 0 percent.

* * * * *

(v) *End-of-year carry-over for IFQ.* (A) With the exception of vessels that held a confirmation of permit history as described in § 648.4(a)(2)(ii)(L) for the entire fishing year preceding the carry-over year, LAGC IFQ vessels that have unused IFQ on the last day of February of any year may carry over up to 15 percent of the vessel's original IFQ and transferred (either temporary or permanent) IFQ into the next fishing year. For example, a vessel with a 10,000-lb (4,536-kg) IFQ and 5,000-lb (2,268-kg) of leased IFQ may carry over 2,250 lb (1,020 kg) of IFQ (i.e., 15 percent of 15,000 lb (6,804 kg)) into the next fishing year if it landed 12,750 lb (5,783 kg) (i.e., 85 percent of 15,000 lb (6,804 kg)) of scallops or less in the preceding fishing year. Using the same IFQ values from the example, if the vessel landed 14,000 lb (6,350 kg) of scallops, it could carry over 1,000 lb (454 kg) of scallops into the next fishing year.

(B) For accounting purposes, the combined total of all vessels' IFQ carry-over shall be added to the LAGC IFQ fleet's applicable ACL for the carry-over year. Any IFQ carried over that is landed in the carry-over fishing year shall be counted against the ACL specified in paragraph (a)(4)(i) of this section, as increased by the total carry-over for all LAGC IFQ vessels, as specified in this paragraph (h)(2)(v)(B). IFQ carry-over shall not be applicable to the calculation of the IFQ cap specified in paragraph (h)(3)(i) of this section and the ownership cap specified in paragraph (h)(3)(ii) of this section.

(vi) *AM for the IFQ fleet.* If a vessel exceeds its IFQ, including all temporarily and permanently transferred IFQ, in a fishing year, the amount of landings in excess of the vessel's IFQ, including all temporarily and permanently transferred IFQ, shall be deducted from the vessel's IFQ as soon as possible in the fishing year following the fishing year in which the vessel exceeded its IFQ. If the AM takes effect, and an IFQ vessel lands more scallops than allocated after the AM is applied, the vessel shall have the IFQ landed in excess of its IFQ after applying the AM deducted from its IFQ in the subsequent fishing year. For example, a vessel with an initial IFQ of 1,000 lb (453.6 kg) in 2010 that lands 1,200 lb (544.3 kg) of scallops in 2010, and is initially allocated 1,300 lb (589.7 kg) of scallops in 2011 would be subject to an IFQ reduction equal to 200 lb (90.7 kg) to account for the 200 lb (90.7 kg) overage in 2010. If that vessel lands 1,300 lb (589.7 kg) of scallops in 2011 prior to application of the 200 lb (90.7 kg) deduction, the vessel would be subject to a deduction of 200 lb (90.7 kg) in 2012. For vessels involved in a temporary IFQ transfer, the entire deduction shall apply to the vessel that acquired IFQ, not the transferring vessel. A vessel that has an overage that exceeds its IFQ in the subsequent fishing year shall be subject to an IFQ reduction in subsequent years until the overage is paid back. For example, a vessel with an IFQ of 1,000 lb (454 kg) in each year over a 3-year period that harvests 2,500 lb (1,134 kg) of scallops the first year would have a 1,500-lb (680-kg) IFQ deduction, so that it would have zero pounds to harvest in year 2, and 500 lb (227 kg) to harvest in year 3. A vessel that has a ''negative'' IFQ balance, as described in the example, could lease or transfer IFQ to balance the IFQ, provided there are no sanctions or other enforcement penalties that would prohibit the vessel from acquiring IFQ.

(3) * * *

(i) * * *

(A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section.

(B) A vessel may be initially issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or that was issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(i)(A) of this section, is eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permit or confirmations of permit history will result in the 2.5-percent IFQ cap restriction being exceeded.

(ii) * * *

(A) For any vessel acquired after June 1, 2008, a vessel owner is not eligible to be issued an IFQ scallop permit for the vessel, and/or a confirmation of permit history, and is not eligible to transfer IFQ to the vessel, if, as a result of the issuance of the permit and/or confirmation of permit history, or IFQ transfer, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in more than 5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section.

* * * * *

(4) *IFQ cost recovery.* A fee, not to exceed 3 percent of the ex-vessel value of IFQ scallops harvested, shall be collected to recover the costs associated with management, data collection, and enforcement of the IFQ program. The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in this paragraph (h)(4), shall be responsible for paying the fee as specified by NMFS in this paragraph (h)(4). An IFQ scallop vessel shall incur a cost recovery fee liability for every landing of IFQ scallops. The IFQ scallop permit holder shall be responsible for collecting the fee for all of its vessels'

IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year. The cost recovery fee for all landings, regardless of ownership changes throughout the fishing year, shall be the responsibility of the official owner of the vessel, as recorded in the vessel permit or confirmation of permit history file, at the time the bill is sent.

* * * * *

(5) * * *

(ii) *Permanent IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel. Any such transfer cannot be limited in duration and is permanent, unless the IFQ is subsequently transferred to another IFQ scallop vessel, other than the originating IFQ scallop vessel, in a subsequent fishing year. If a vessel owner permanently transfers the vessel's entire IFQ to another IFQ vessel, the LAGC IFQ scallop permit shall remain valid on the transferring vessel, unless the owner of the transferring vessel cancels the IFQ scallop permit. Such cancellation shall be considered voluntary relinquishment of the IFQ permit, and the vessel shall be ineligible for an IFQ scallop permit unless it replaces another vessel that was issued an IFQ scallop permit. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. IFQ can be transferred only once during a given fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the ACL allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

(iv) *Application for an IFQ transfer.* The owners of vessels applying for a transfer of IFQ must submit a completed application form obtained from the Regional Administrator. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the scallop fishing year, provided the vessel transferring the IFQ to another vessel has not utilized any of its own IFQ in that fishing year. Applications for temporary transfers received less than 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ, if approved, prior to the expiration of the fishing year.

(A) *Application information requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or state registration number; transferee's name, vessel name, permit number, and official number or state registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be less than 100 lb (45 kg) unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery.

(B) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 30 days of receipt of an application.

(C) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ for any of the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's vessel has fished under its IFQ prior to the completion of the transfer request; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to a final administrative decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2.5 percent of the ACL allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of, or interest in, a general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels; or any other failure to meet the requirements of the regulations in 50 CFR part 648. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision by the Regional Administrator is the final agency decision, and there is no opportunity to appeal the Regional Administrator's decision. An application that was denied can be resubmitted if the discrepancy(ies) that resulted in denial are resolved.

* * * * *

§ 648.58 [Amended]

■ 4. In § 648.58, paragraphs (a) and (e) are removed and reserved.

■ 5. In § 648.59:

■ a. Paragraphs (a)(4) and (c)(1) are removed and reserved;

■ b. The introductory text in paragraph (b) is revised; and

■ c. Paragraphs (a)(1), (a)(3), (b)(1), (b)(2), (b)(3), (b)(5)(i), (b)(5)(ii)(A), (b)(5)(ii)(B), (c)(2), (c)(5)(i), (c)(5)(ii)(A), (d)(1), (d)(2), (d)(3), (d)(5)(i), (d)(5)(ii)(A), (d)(5)(ii)(B), and (e) are revised to read as follows:

§ 648.59 Sea Scallop Access Areas.

(a) * * *

(1) From March 1, 2011, through February 28, 2014 (i.e., fishing years 2011 through 2013), a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Delmarva Sea Scallop Access Area, described in paragraph (a)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Delmarva Scallop Access Area schedule and TACs specified in paragraph (a)(3) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

* * * * *

(3) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Delmarva Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with

another vessel owner whereby the vessel gains a Delmarva Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Delmarva Access Area trip that was terminated early, as specified in § 648.60(c). Additionally, limited access full-time and part-time scallop vessels are restricted in the number of trips that may be taken from June 15 through October 31, as specified in § 648.60(a)(3)(i)(B)(*4*) and (a)(3)(i)(C)(*4*). The number of trips allocated to limited access vessels in the Delmarva Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in paragraph (a)(5)(i) of this section. The Delmarva Access Area scallop TACs for limited access scallop vessels are 5,886,000 lb (2,670 mt) in fishing year 2011, and 2,943,000 lb (1,335 mt) in fishing years 2012 and 2013.

(ii) *LAGC IFQ scallop vessels.*—(A) The percentage of the Delmarva Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified in paragraph (a)(4)(ii)(A) of this section through the framework adjustment process, and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (a)(4)(ii)(B) of this section. LAGC IFQ vessels will be allocated 355,900 lb (161 mt) in fishing year 2011, 177,490 lb (81 mt) in fishing year 2012, and 178,600 lb (81 mt) in fishing year 2013, which represent 5.5 percent of the Delmarva Access Area TACs for each fishing year. This TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (a)(4)(ii)(A) of this section, LAGC scallop vessels are allocated 593 trips in fishing year 2011, 296 trips in fishing year 2012, and 298 trips in fishing year 2013 to the Delmarva Access Area. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the total number of trips have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(*1*) If the fleet-wide Delmarva Access Area trip allocation implemented by Framework 22 is exceeded in the 2011 fishing year, the fleet-wide Delmarva Access Area trip allocation in fishing year 2012 shall be reduced by the number of trips taken in excess of the amount specified in paragraph (a)(3)(ii)(B) of this section.

(*2*) [Reserved]

(C) Scallops landed by each LAGC IFQ vessel on a Delmarva Access Area trip shall be counted against that vessel's IFQ.

* * * * *

(b) *Closed Area I Access Area*—(1) From March 1, 2013, through February 28, 2014 (i.e., fishing year 2013), vessels issued scallop permits may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (b)(5)(ii)(C) of this section. The Closed Area I Sea Scallop Access Area schedule and TACs specified in paragraph (b)(5) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(2) From March 1, 2011, through February 28, 2013 (i.e., fishing years 2011 and 2012), subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a scallop permit may fish for, possess, and land scallops in or from the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in 648.60.

(3) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIA1	41°26′ N	68°30′ W
CAIA2	40°58′ N	68°30′ W
CAIA3	40°55′ N	68°53′ W
CAIA4	41°04.5′ N	69°01′ W
CAIA1	41°26′ N	68°30′ W

* * * * *

(5) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in paragraph (c)(5)(i) of this section. The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in this paragraph (b)(5)(i). The Closed Area I Access Area scallop TAC for limited access scallop vessels is 8,829,000 (4,005 mt) in fishing year 2011, and 2,943,000 lb (1,335 mt) in fishing year 2012. Closed Area I Access Area is closed to limited access vessels for the 2013 fishing year.

(ii) * * *

(A) The percentage of the Closed Area I Access Area TAC to be allocated to LAGC scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (b)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. LAGC IFQ vessels will be allocated 533,850 lb (242 mt) in fishing year 2011, and 177,490 lb (81 mt) in fishing year 2012, which represent 5.5 percent of the Closed Area I Access Area TACs for each fishing year. This TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Closed Area I Access Area will be closed to LAGC IFQ vessels in fishing year 2013.

(B) Based on the TACs specified in paragraph (b)(5)(ii)(A) of this section, LAGC IFQ vessels are allocated a total of 890 trips in fishing year 2011, and 296 trips in fishing year 2012 in the Closed Area I Access Area. No LAGC IFQ trips will be allocated in Closed Area I Access Area in fishing year 2013.

The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips for the applicable fishing year have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (b)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared LAGC scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

* * * * *

(c) * * *

(2) From March 1, 2011, through February 28, 2014 (i.e., fishing years 2011 through 2013), subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Closed Area II Sea Scallop Access Area schedule and TACs specified in paragraph (c)(5) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

* * * * *

(5) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area II Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). The Closed Area II Access Area scallop TACs for limited access scallop vessels are 2,943,000 lb (1,335 mt) in fishing year 2011 and 5,886,000 lb (2,670 mt) in fishing years 2012 and 2013.

(ii) * * *

(A) The percentage of the total Closed Area II Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to IFQ LAGC scallop vessels as specified in paragraph (c)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits. The Closed Area II Access Area is closed to LAGC IFQ vessels in the 2011 through 2013 fishing years.

* * * * *

(d) * * *

(1) From March 1, 2011, through February 28, 2012 (i.e., fishing year 2011), vessels issued scallop permits may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (d)(5)(ii)(C) of this section.

(2) From March 1, 2012, through February 28, 2014 (*i.e.,* fishing years 2012 and 2013), subject to the seasonal restrictions specified in paragraph (d)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Nantucket Lightship Sea Scallop Access Area schedule and TACs specified in paragraph (d)(5) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(3) The Nantucket Lightship Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLAA1	40°50′ N	69°30′ W
NLAA2	40°50′ N	69°00′ W
NLAA3	40°20′ N	69°00′ W
NLAA4	40°20′ N	69°30′ W
NLAA1	40°50′ N	69°30′ W

* * * * *

(5) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Nantucket Lightship Access Area shall be based on the TAC for the access area. The Nantucket Lightship Access Area scallop TACs for limited access scallop vessels are 2,943,000 lb (1,335 mt) in fishing year 2012, and 5,886,000 lb (2,670 mt) in fishing year 2013. The Nantucket Lightship Access Area will be closed to limited access vessels in fishing year 2011.

(ii) * * *

(A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (d)(5)(ii)(B) of this section. The Nantucket Lightship Access Area will be closed to LAGC IFQ vessels in fishing year 2011. LAGC IFQ vessels are allocated 177,490 lb (81 mt) in fishing year 2012 and 357,200 lb (162 mt) in fishing year 2013, which represent 5.5 percent of the Nantucket Lightship Access Area TAC for each fishing year. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (d)(5)(ii)(A) of this section, LAGC scallop vessels are allocated 296 trips in fishing year 2012, and 595 trips in fishing year 2013 to the Nantucket Lightship Access Area. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the total number of trips have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC IFQ scallop vessel

may not fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

* * * * *

(e) *Hudson Canyon Sea Scallop Access Area.* (1) From March 1, 2011, through February 28, 2014 (i.e., fishing years 2011 through 2013), a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Hudson Canyon Sea Scallop Access Area, described in paragraph (e)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Hudson Canyon Sea Scallop Access Area schedule and TACs specified in paragraph (e)(4) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(2) The Hudson Canyon Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
H1	39°30′ N	73°10′ W
H2	39°30′ N	72°30′ W
H3	38°30′ N	73°30′ W
H4	38°50′ N	73°30′ W
H5	38°50′ N	73°42′ W
H1	39°30′ N	73°10′ W

(3) [Reserved]

(4) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Hudson Canyon Sea Scallop Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Hudson Canyon Sea Scallop Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Hudson Canyon Access Area trip that was terminated early, as specified in § 648.60(c). Additionally, limited access full-time and part-time scallop vessels are restricted in the number of trips that may be taken from June 15 through October 31, as specified in § 648.60(a)(3)(i)(B)(*4*) or § 648.60(a)(3)(i)(C)(*4*). The Hudson Canyon Access Area scallop TACs for limited access scallop vessels are 5,886,000 lb (2,670 mt) in fishing year 2011, and 8,829,000 lb (4,005 mt) in fishing years 2012 and 2013.

(ii) *LAGC IFQ scallop vessels.*—(A) The percentage of the Hudson Canyon Access Area TAC to be allocated to LAGC scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. LAGC IFQ vessels shall be allocated 355,900 lb (161 mt) in fishing year 2011, 532,460 lb (242 mt) in fishing year 2012, and 535,800 lb (243 mt) in fishing year 2013, which is 5.5 percent of the Hudson Canyon Access Area TAC for each fishing year. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TACs specified in paragraph (e)(4)(ii)(A) of this section, LAGC IFQ vessels are allocated a total of 593, 887, and 893 trips in the Hudson Canyon Access Area in fishing years 2011, 2012, and 2013, respectively. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Hudson Canyon Access Area, or enter the Hudson Canyon Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(C) Scallops landed by each LAGC IFQ vessel on a Hudson Canyon Access Area trip shall count against that vessel's IFQ.

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■ 6. In § 648.60, paragraphs (a)(3)(i), (a)(5)(i), (c)(5)(ii)(A), (c)(5)(v), (d)(1), the heading of paragraph (e), and paragraphs (e)(1) and (g)(1) are revised, paragraph (a)(3)(ii)(A) is added, and paragraph (a)(3)(ii)(B) is added and reserved, to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(3) * * *

(i) *Limited access vessel trips.* (A) Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, or has been allocated a compensation trip pursuant to paragraph (c) of this section.

(*1*) In fishing year 2011, if a full-time vessel engages in trip exchanges, as specified in § 648.60(a)(3)(ii), prior to the implementation of Framework 22, resulting in such vessel receiving a total of five access area trips due to the mid-year implementation of Framework 22, the vessel must relinquish one trip of the vessel owner's choice in fishing year 2011 from its available access area trip allocation in order not to exceed the allocation of four trips as specified in paragraph (a)(3)(i)(B) of this section. As soon as possible after the implementation of Framework 22, NMFS shall send a notification letter to the owner of such a vessel regarding the requirement that one of the vessel's unused access area trips must be relinquished in fishing year 2011 to account for the previous trip exchange. The vessel owner will be given the opportunity to select the area from which the trip will be deducted, with NMFS determining the area if the vessel owner fails to respond within 30 days according to instructions provided in such letter.

(*2*) [Reserved]

(B) *Full-time scallop vessels.*—(*1*) In fishing year 2011, each full-time vessel shall have a total of four access area trips and is subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(*4*) of this section. All full-time scallop vessels shall be allocated one trip in the Delmarva Access Area, one trip into the Hudson Canyon Access Area, and one trip into the Closed Area I Access Area. In addition, each vessel shall receive either an additional trip into the Closed Area I Access Area or a trip into the Closed Area II Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and shall be made publically available on the Northeast Regional website prior to the start of the 2011 fishing year.

(*2*) In fishing year 2012, each full-time vessel shall have a total of four access

area trips and is subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(*4*) of this section. All full-time vessels shall receive one trip into the Closed Area II Access Area and one trip into the Hudson Canyon Access Area. Each vessel shall also receive an additional two access area trips that must be allocated in one of the following combinations: One trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area I Access Area and one additional trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Delmarva Access Area; one trip in the Nantucket Lightship Access Area and an additional trip in the Hudson Canyon Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area; or an additional trip in the Hudson Canyon Access Area and one in the Delmarva Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and shall be made publically available prior to the start of the 2012 fishing year. A full description of the random assignment process for FY 2012 is outlined in Section 2.4.2 of Framework 22 to the Scallop Fishery Management Plan.

(*3*) At the start of fishing year 2013, each full-time vessel shall have a total of four access area trips and are subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(*4*) of this section. The access area trip allocations for the 2013 fishing year are default allocations that are subject to change in a future framework adjustment. All full-time scallop vessels shall be allocated one trip in the Closed Area II Access Area, one trip in the Nantucket Lightship Access Area, and one trip in the Hudson Canyon Access Area. In addition, each vessel shall receive either an additional trip in the Hudson Canyon Access Area or in the Delmarva Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and will be made publically available prior to the start of the 2013 fishing year. A full description of the random assignment process for FY 2013 is outlined in Section 2.4.2 of Framework 22 to the Scallop Fishery Management Plan.

(*4*) A full-time scallop vessel may not fish for, possess, or retain more than a combined total of 18,000 lb (8,165 kg) of scallops during the period June 15 through October 31, the equivalent of one full trip possession limit specified in § 648.60(a)(5)(i), during this time period from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e). For example, a full-time vessel may possesses or land up to 18,000 lb (8,165 kg) from the Hudson Canyon Access Area, up to 18,000 lb (8,165 kg) from the Delmarva Access Area, or up to 18,000 lb (8,165 kg) combined from separate trips into each access area during June 15 through October 31. The remaining access area trips may be taken during the remainder of the fishing year. These possession and landing restrictions do not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through October 31. In addition, if the owner of a full-time vessel has exchanged a trip(s) with another vessel owner(s) so that the vessel has an allocation of four combined trips into the Delmarva and/or Hudson Canyon Access Areas, that vessel may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in § 648.60(a)(5)(i), during this time period from the Delmarva and/or Hudson Canyon Access Areas combined.

(*i*) If, prior to the implementation of Framework 22, a full-time vessel with less than four total Mid-Atlantic access trips possesses or lands more than 18,000 lb (8,165 kg) from declared access area trips into the Delmarva and Hudson Canyon Access Areas during June 15 through October 31 in fishing year 2011, that vessel shall not declare an access area trip in fishing year 2012 in the Mid-Atlantic during June 15 through October 31. Alternatively, a full-time vessel could account for the overage by exchanging trips with another vessel(s) so that it has an allocation of a total of four Mid-Atlantic trips and continue to fish up to a maximum of 36,000 lb (16,329 kg) (i.e., the equivalent of two full-time limited access trips) through October 31, 2011.

(*ii*) [Reserved]

(C) *Part-time scallop vessels.* (*1*) For the 2011 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Closed Area I Access Area; one trip in the Closed Area I Access Area and one trip in the Closed Area II Access Area; one trip in the Closed Area I Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Delmarva Access Area; one trip in the Closed Area II Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Delmarva Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(*4*) of this section.

(*2*) For the 2012 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area I Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Delmarva Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Hudson Canyon Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(*4*) of this section.

(*3*) For the 2013 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area II Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Delmarva Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Hudson Canyon Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(*4*) of this section. The access area trip allocations for the 2013 fishing year are default allocations and are subject to change in a future framework adjustment.

(*4*) A part-time scallop vessel may not fish for, possess, or retain more than a combined total of 14,400 lb (6,532 kg) of scallops, the equivalent of one full trip possession limit specified in § 648.60(a)(5)(i), during the period June 15 through October 31 from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e). For example, a part-time vessel may possess or land up to 14,400 lb (6,532 kg) from the Hudson Canyon Access Area, up to 14,400 lb (6,532 kg) from the Delmarva Access Area, or up to 14,400 lb (6,532 kg) combined from separate trips into each access area during June

15 through October 31. The remaining access area trips allocated to part-time vessels may be taken in the Hudson Canyon Access Area or Delmarva Access Area during the remainder of the fishing year, or taken in a different access area during the period of June 15 through October 31. These possession and landing restrictions do not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through October 31.

(*i*) If, prior to the implementation of Framework 22, a part-time vessel possesses or lands more than 14,400 lb (6,532 kg) from declared access area trips into the Delmarva and Hudson Canyon Access Areas combined during June 15 through October 31 in fishing year 2011, that vessel shall not declare an access area trip in fishing year 2012 in the Mid-Atlantic during June 15 through October 31.

(*ii*) [Reserved]

(D) *Occasional scallop vessels.* (*1*) For the 2011 fishing year, an occasional scallop vessel may take one trip in the Closed Area I Access Area, or one trip in the Closed Area II Access Area, or one trip in the Hudson Canyon Access Area, or one trip in the Delmarva Access Area.

(*2*) For the 2012 fishing year, an occasional scallop vessel may take one trip in the Hudson Canyon Access Area, or one trip in the Closed Area I Access Area, or one trip in the Closed Area II Access Area, or one trip in the Nantucket Lightship Access Area, or one trip in the Delmarva Access Area.

(*3*) For the 2013 fishing year, an occasional scallop vessel may take one trip in the Hudson Canyon Access Area, or one trip in the Closed Area II Access Area, or one trip in the Nantucket Lightship Access Area, or one trip in the Delmarva Access Area. The access area trip allocations for the 2013 fishing year are default allocations and are subject to change in a future framework adjustment.

(E) [Reserved]

(ii) * * *

(A) *Trip exchanges involving Elephant Trunk Access Area trips that occur in the 2011 fishing year prior to the implementation of Framework 22.* See § 648.53(b)(4)(vii).

(B) [Reserved]

* * * * *

(5) * * *

(i) *Scallop possession limits.* Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in the table in this paragraph (a)(5). Full-time and part-time vessels shall not fish for, possess, or retain more than 18,000 lb (8,165 kg) and 14,400 lb (6,532 kg), respectively, of scallops from the Hudson Canyon and Delmarva Access Areas, combined, from trips taken between June 15 and October 31 (i.e., the equivalent of one full trip based on permit category). In addition, if the owner of a full-time vessel has exchanged a trip(s) with another vessel owner(s) so that the vessel has a total allocation of four combined trips into the Delmarva and/or Hudson Canyon Access Areas, that vessel may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in paragraph (a)(5)(i) of this section, during this time period from the Delmarva and/or Hudson Canyon Access Areas. These possession and landing restrictions do not include the additional possession allowance to defray the cost of carrying an observer as specified in paragraph (d) of this section that occur during observed trips between June 15 and October 31. No vessel declared into the Access Areas as described in § 648.59(a) through (e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

Fishing year	Permit category possession limit		
	Full-time	Part-time	Occasional
2010	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)
2012	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)
2013	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(A) Pursuant to paragraphs (a)(3)(i)(B)(*4*) or (a)(3)(i)(C)(*4*) of this section, a full-time or part-time vessel may not take a compensation trip based on a single or multiple terminated trip(s) during the period June 15 through October 31 if the compensation trip would allow a vessel to land more than 18,000 lb (8,165 kg) or 14,400 lb (6,532 kg) (i.e., the equivalent of one full access area trip), respectively, during the period June 15 through October 31, in the Hudson Canyon Access Area and Delmarva Access Area combined. For example, a vessel that terminated a trip in the Delmarva Access Area on June 1, 2011, and intends to declare two full trips in the Hudson Canyon Access Area access area from June 15 through October 31, must wait to fish its compensation trip in the Delmarva Access Area until on or after November 1, 2011. If the owner of a full-time vessel has exchanged a trip(s) with another vessel owner(s) so that the vessel has an allocation of four combined trips into the Delmarva and/or Hudson Canyon Access Areas, that vessel may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in paragraph 648.60(a)(5)(i) of this section, during this time period from the Delmarva and/or Hudson Canyon Access Areas.

* * * * *

(v) *Additional compensation trip carryover.* If an Access Area trip conducted during the last 60 days of the open period or season for the Access Area is terminated before catching the allowed possession limit, and the requirements of paragraph (c) of this section are met, the vessel operator shall be authorized to fish an additional trip as compensation for the terminated trip in the following fishing year. The vessel owner/operator must take such additional compensation trips, complying with the trip notification procedures specified in paragraph (a)(2)(iii) of this section, within the first 60 days of that fishing year the Access Area first opens in the subsequent fishing year. For example, a vessel that terminates an Delmarva Access Area trip on December 29, 2011, must declare that it is beginning its additional compensation trip during the first 60 days that the Delmarva Access Area is open (March 1, 2012, through April 29, 2012). If an Access Area is not open in the subsequent fishing year, then the additional compensation trip

authorization would expire at the end of the Access Area Season in which the trip was broken. For example, a vessel that terminates a Closed Area I trip on December 10, 2012, may not carry its additional compensation trip into the 2013 fishing year because Closed Area I is not open during the 2013 fishing year, and must complete any compensation trip by January 31, 2013.

(d) * * *

(1) *Observer set-aside limits by area*—(i) *Nantucket Lightship Access Area.* For the 2012 and 2013 fishing years, the observer set-asides for the Nantucket Lightship Access Area are 36,000 lb (16 mt) and 84,450 lb (38 mt), respectively.

(ii) *Closed Area I Access Area.* For the 2011 and 2012 fishing years, the observer set-asides for the Closed Area I Access Area are 111,540 lb (51 mt) and 36,000 lb (316 mt), respectively.

(iii) *Closed Area II Access Area.* For the 2011, 2012, and 2013 fishing years, the observer set-aside for the Closed Area II Access Area are 35,060 lb (16 mt), 67,890 lb (31 mt), and 79,600 lb (36 mt), respectively.

(iv) *Delmarva Access Area.* For the 2011, 2012, and 2013 fishing years, the observer set-aside for the Delmarva Access Area are 74,360 lb (34 mt), 36,000 lb (316 mt), and 42,230 lb (19 mt), respectively.

(v) *Hudson Canyon Access Area.* For the 2011, 2012, and 2013 fishing years, the observer set-aside for the Hudson Canyon Access Area are 74,360 lb (34 mt), 107,980 lb (49 mt), and 126,680 lb (57 mt), respectively.

* * * * *

(e) Sea Scallop Research Set-Aside Harvest in Access Areas—

(1) *Access Areas available for harvest of research set-aside (RSA).* RSA may be harvested in any access area that is open in a given fishing year, as specified through a framework adjustment and pursuant to § 648.56. The amount of pounds that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2011 through 2013 are:

(i) *2011:* Delmarva Access Area, Hudson Canyon Access Area, Closed Area I Access Area, and Closed Area II Access Area.

(ii) *2012:* Delmarva Access Area, Hudson Canyon Access Area, Closed Area I Access Area, Closed Area II Access Area, and Nantucket Lightship Access Area.

(iii) *2013:* Delmarva Access Area, Hudson Canyon Access Area, Nantucket Lightship Access Area, and Closed Area II Access Area.

* * * * *

(g) * * *

(1) An LAGC scallop vessel may only fish in the scallop access areas specified in § 648.59(a) through (e), subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (a)(9), (d), (e), (f), and (g) of this section, and § 648.85(c)(3)(ii). A vessel issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), provided the vessel complies with the requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

* * * * *

■ 7. In § 648.62, paragraph (b)(1) is revised to read as follows.

§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.

* * * * *

(b) * * *

(1) *NGOM annual hard TACs.* The annual hard TAC for the NGOM is 70,000 lb (31.8 mt) for the 2011, 2012, and 2013 fishing years. The NGOM TAC for the 2013 fishing year is a default allocation and is subject to change in a future framework adjustment.

* * * * *

[FR Doc. 2011–18314 Filed 7–20–11; 8:45 am]

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FEDERAL REGISTER

Vol. 76 Thursday,
No. 140 July 21, 2011

Part IV

The President

Notice of July 20, 2011—Continuation of the National Emergency With Respect to the Former Liberian Regime of Charles Taylor

Federal Register
Vol. 76, No. 140
Thursday, July 21, 2011

Presidential Documents

Title 3—

The President

Notice of July 20, 2011

Continuation of the National Emergency With Respect to the Former Liberian Regime of Charles Taylor

On July 22, 2004, by Executive Order 13348, the President declared a national emergency and ordered related measures, including the blocking of the property of certain persons connected to the former Liberian regime of Charles Taylor, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of former Liberian President Charles Taylor and other persons, in particular their unlawful depletion of Liberian resources and their removal from Liberia and secreting of Liberian funds and property, which have undermined Liberia's transition to democracy and the orderly development of its political, administrative, and economic institutions and resources.

The actions and policies of Charles Taylor and others have left a legacy of destruction that continues to undermine Liberia's transformation and recovery. Because the actions and policies of these persons continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on July 22, 2004, and the measures adopted on that date to deal with that emergency, must continue in effect beyond July 22, 2011. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13348.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
July 20, 2011.

[FR Doc. 2011–18703
Filed 7–20–11; 2:00 pm]
Billing code 3195–W1–P

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H.R. 2279/P.L. 112–21

Airport and Airway Extension Act of 2011, Part III (June 29, 2011; 125 Stat. 233)

S. 349/P.L. 112–22

To designate the facility of the United States Postal Service located at 4865 Tallmadge Road in Rootstown, Ohio, as the ''Marine Sgt. Jeremy E. Murray Post Office''. (June 29, 2011; 125 Stat. 236)

S. 655/P.L. 112–23

To designate the facility of the United States Postal Service located at 95 Dogwood Street in Cary, Mississippi, as the ''Spencer Byrd Powers, Jr. Post Office''. (June 29, 2011; 125 Stat. 237)

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