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FEDERAL REGISTER

Vol. 76 Tuesday,
No. 143 July 26, 2011

Pages 44451–44750

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2011–0051]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL–029 Civil Rights and Civil Liberties Records System of Records

AGENCY: Privacy Office, DHS.

AGENCY: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled, ''Department of Homeland Security/ALL–029 Civil Rights and Civil Liberties Records System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ''Department of Homeland Security/ALL–029 Civil Rights and Civil Liberties Records System of Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective July 26, 2011.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking (NPRM) in the **Federal Register**, 75 FR 39184, July 8, 2010, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records. The DHS/ALL–029 Civil Rights and Civil Liberties Records system of records notice (SORN) was published concurrently in the **Federal Register**, 75 FR 39266, July 8, 2010, and comments were invited on both the NPRM and SORN.

Public Comments

DHS received one comment on the NPRM and one comment on the SORN.

NPRM

Public Comment: The commenter asked that DHS ''consider then the longevity of your agency's [DHS] decision to classify civil rights records; pent up negativity tends to torrentially destroy future objectives, and undermines the legitimacy of the work done to bring justice to those who deserve its retribution.''

DHS Response: DHS is not seeking, through the proposed rule, to classify civil rights records. Rather, DHS has exempted certain records within this system of records from release under the Privacy Act because they are classified records, investigatory records compiled for law enforcement purposes, records related to the protection of the President and others, and investigatory records used for employee and contractor suitability determinations.

SORN

Public Comment: The commenter noted that ''many persons affected by these programs are afraid to complain about misconduct because they fear that the personally identifying information that they provide will not be kept confidential or that they will be retaliated against by the agencies about which they complain. The SORN does nothing to alleviate these fears. In fact, it makes explicit that identifying information will be shared among government agencies, including state and local agencies. This was a missed opportunity to ensure that complaints may be made without fear of reprisal. It does not provide any meaningful opportunity for complainants to learn the results of their complaints.''

DHS Response: The purpose of a Privacy Act SORN is to provide reasonable notice to the public on information that the Department is collecting, maintaining, and retrieving by personal identifier related directly to an individual in an agency system. The purpose is also to state the purpose, information on records and individuals covered, information sharing with other entities, records retention, and redress on information within that system. It is not intended to be a mechanism for complainants to learn the results of their complaints. There is a separate process for that. Information received within these systems of records must be protected by government agencies as outlined in statutes, executive orders, regulations, and DHS policy; in this case, records related to civil rights and civil liberties. There are limits to sharing information in a Privacy Act system of records, this includes between Federal, state, and local agencies including law enforcement. Sharing must be done in accordance with the routine uses in the Privacy Act system of records as published in the **Federal Register.** Routine uses apply to information sharing external to DHS. The term ''routine use'' is defined, with respect to the disclosure of a record, as the use of such record for a purpose which is compatible with the purpose for which the record was collected. This ensures the public receives adequate notice of the Department's planned uses of the information in the system of records.

DHS will implement this rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. § 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. In Appendix C to Part 5, revise paragraph 2 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

2. The DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records consists of electronic and paper records and

will be used by DHS and its components. The DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; national security and intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, state, local, Tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. § 552a(k)(1), (k)(2), (k)(3), and (k)(5). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the individual who is the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would, therefore, present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the individual who is the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

* * * * *

Dated: June 9, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–18832 Filed 7–25–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2011–0054]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security National Protection and Programs Directorate—001 National Infrastructure Coordinating Center Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled, ''Department of Homeland Security/National Protection and Programs Directorate—001 National Infrastructure Coordinating Center Records System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ''Department of Homeland Security/National Protection and Programs Directorate—001 National Infrastructure Coordinating Center Records System of Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The Department will not claim Privacy Act exemption (k)(3) as originally published in the Notice of Proposed Rulemaking.

DATES: *Effective Date:* This final rule is effective July 26, 2011.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Emily Andrew (703–235–2182), Senior Privacy Officer, National Protection and Programs Directorate, Department of Homeland Security, Washington, DC 20525. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), published a notice of proposed rulemaking (NPRM) in the **Federal Register**, 75 FR 69603, on November 15, 2010, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/NPPD—001 National Infrastructure Coordinating Center (NICC) Records System of Records. The DHS/NPPD—001 NICC Records system of records notice (SORN) was published concurrently in the **Federal Register**, 75 FR 69693, November 15, 2010, and comments were invited on both the NPRM and SORN. The Department will not claim Privacy Act exemption (k)(3) as originally published in the NPRM.

Public Comments

DHS received one set of public comments from the Electronic Privacy Information Center (EPIC). Comments submitted for the NPRM and SORN were identical. Each comment is outlined below followed by the Department's response.

1. By exempting this system of records from certain provisions of the Privacy Act, DHS is contravening the purpose of the Act.

Comment: EPIC urged DHS to limit its exemptions from the Privacy Act's provisions, including 5 U.S.C. 552a(c)(3), which entitles individuals to an accounting of disclosures of their records, stating that individuals should be able to know, after an investigation is completed or made public, the information stored about them in the system. Further, EPIC wrote that because information from informants may be used to initiate investigations,

individuals may find themselves investigated due to malicious information. This could be alleviated by providing access to records of completed investigations with appropriate redactions. EPIC also stated that DHS is retaining the right to disseminate using the overly broad standard of ''potential risk of harm to an individual,'' while limiting access to that same information that may be further disseminated.

Response: DHS recognizes the need to allow individuals the rights to and an account of disclosures of their records. The determination to exempt records from 5 U.S.C. 552a(d) is justified on a case-by-case basis, to be determined at the time a request is made. In those instances where an individual's records are determined to be exempt from this provision, the individual may seek access to such records under 5 U.S.C. 552.

Comment: EPIC stated that DHS is exempting this system from 5 U.S.C. 552a(d) in order to prevent individuals from avoiding detection or tampering with evidence, which DHS argues would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. EPIC wrote that this restriction would not only contravene the Privacy Act, but may also hinder some government investigations, as was illustrated in a 2007 Department of Justice Inspector General review of the Transportation Security Administration's (TSA) Terrorist Screening Center, which indicates that errors in the watch list obstruct the capture of actual terrorists and affect innocent individuals. EPIC specifically referenced fusion center data, writing that by exempting this data, DHS would prevent individuals from requesting information that DHS may be keeping on them, limiting their opportunity to seek redress.

Response: DHS recognizes the need to allow individuals the right to seek redress. The determination to exempt records from 5 U.S.C. 552a(d) is justified on a case-by-case basis, to be determined at the time a request is made. In those instances where an individual's records are determined to be exempt from this provision, the individual may seek access to such records under 5 U.S.C. 552. With respect to EPIC's specific comment regarding fusion center data that information falls outside the scope of this NPRM and SORN.

Comment: EPIC urged DHS to remove this system's exemption from 5 U.S.C. 552a(e)(1), requiring that records maintained in this system be relevant and necessary to accomplish the agency's purpose, as this standard is a fundamental and necessary part of the Privacy Act protections and staves off mission creep. EPIC cited TSA's second-generation Computer Assisted Passenger Prescreening System (CAPPS II) program as an example in which mission creep led to additional opportunity for errors. Further, EPIC wrote that this blanket exemption would allow records to contain information unrelated to any purpose of DHS.

Response: In the interest of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity. The information collected in this system that may be helpful in a particular investigation would likely be relevant and necessary to the investigation at some stage, and thus be in compliance with the standards of the Privacy Act.

Comment: EPIC expressed concerns with the operation of a proposed fusion center without being subject to the provisions of 5 U.S.C. 552a(e)(4)(G)–(I) and (f), noting that this would prevent individuals from knowing whether records in this system pertain to them. EPIC wrote that DHS could promulgate rules requiring notification only after an active investigation has been concluded or with sensitive information redacted prior to release.

Response: This comment relates to fusion center activities, which are outside the scope of this NPRM and SORN.

2. The NICC Proposal Requires a Narrow Mission with Clear Oversight Mechanisms and Limiting Guidelines.

Comment: EPIC wrote that the NICC mission statement is overly broad and justifies the collection of personal information for virtually any reason or for no reason at all. Instead, EPIC would advocate for meaningful guidance on the reasons and purpose of the creation of the system of records, arguing that the range of routine uses proposed by DHS are so broad as to make meaningless any intent to restrict data, furthering the possibility of mission creep.

Response: Consistent with DHS's information sharing mission, information contained in the system of records may be shared with other DHS components, as well as appropriate Federal, state, local, Tribal territorial, foreign or international government agencies. The sharing will only take place after DHS determines that the receiving component or agency has a verifiable need to know the information to carry out national security, law enforcement, immigration, intelligence-related activities, or to the functions consistent with the routine uses. DHS has provided notice of the purpose of the creation of this system of records in the form of NPRM, the SORN, and the Privacy Impact Assessment (PIA).

3. The NICC Proposal Requires a New PIA.

Comment: EPIC called for a new PIA to be drafted, which would cover fusions centers encompassing Federal projects, as opposed to covering only state, local, and regional fusion center projects.

Response: This comment relates to fusion center activities, which are outside the scope of this NPRM and SORN.

After careful review and consideration of these public comments alongside the published PIA and SORN, the Department will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph ''59'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

59. The DHS/NPPD–001 NICC Records System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/NPPD–001 NICC Records System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities The DHS/NPPD–001 NICC Records System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, state, local, Tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C.

552a(k)(1) and (k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: June 28, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–18828 Filed 7–25–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2009–0079]

Karnal Bunt; Regulated Areas in Arizona, California, and Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the Karnal bunt regulations to make changes to the list of areas or fields regulated because of Karnal bunt, a fungal disease of wheat. Specifically, the interim rule added portions of the Buckeye/Pretoria area of Maricopa County, AZ, to the list of regulated areas and removed Throckmorton and Young Counties, TX, portions of Riverside County, CA, and certain areas in La Paz, Maricopa, and Pinal Counties, AZ, from the list of regulated areas based on our determination that those fields or areas meet our criteria for release from regulation. The interim rule was necessary to prevent the spread of Karnal bunt to noninfected areas of the United States and to relieve restrictions on certain areas that are no longer necessary. In the interim rule, we inadvertently removed two areas in Maricopa County, AZ, from the list of regulated areas. We are returning those areas to the list in this final rule.

DATES: *Effective Date:* July 26, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Evans-Goldner, Karnal Bunt Program Manager, Plant Pathogen and Weed Programs, EDP, PPQ, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737–1236; (301) 734–7228.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed followed by very specific environmental conditions matched during specific stages of wheat growth. The U.S. Department of Agriculture's Animal and Plant Health Inspection Service regulates the movement of articles in the United States that could spread Karnal bunt and works toward eventual eradication of Karnal bunt through biosanitary measures.

In an interim rule [1] effective and published in the **Federal Register** on November 10, 2010 (75 FR 68942–68945, Docket No. APHIS–2009–0079), we amended the Karnal bunt regulations in 7 CFR 301.89–1 through 301.89–16 by adding the Buckeye/Pretoria area of Maricopa County, AZ, to the list of regulated areas. The interim rule also removed Throckmorton and Young Counties, TX, portions of Riverside County, CA, and certain areas in La Paz, Maricopa, and Pinal Counties, AZ, from the list of regulated areas in § 301.89–3 based on our determination that those fields or areas meet our criteria for release from regulation.

We solicited comments concerning the interim rule for 60 days ending January 10, 2011. We did not receive any comments. However, after the publication of the interim rule, we noted that in amending the entry for Maricopa County, AZ, in § 301.89–3, we inadvertently removed paragraphs (3) and (4) in the description of the quarantined areas in that county. We are reinstating those paragraphs in this final rule.

Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule with change discussed in this document.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule became effective on November 10, 2010. This rule reinstates two paragraphs of the description of the regulated area in Maricopa County, AZ. Immediate action

[1] To view the interim rule and a correction that restored several missing hyphens in the rule text, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0079*.

is necessary to ensure that the description of the regulated areas is accurate. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim rule published at 75 FR 68942–68945 on November 10, 2010, as corrected by a document published at 75 FR 70811 on November 19, 2010, is adopted as a final rule with the following changes:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.89–3, paragraph (g), under the heading ''Arizona'', the entry for Maricopa County is amended by adding paragraphs (3) and (4) to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

(g) * * *

Arizona

* * * * *

Maricopa County. * * *

(3) Beginning at the southeast corner of sec. 30, T. 6 S., R. 5 W.; the west to the northeast corner of sec. 33, T. 6 S., R. 6 W.; then south to the southeast corner of sec. 33, T. 6 S., R. 6 W.; then west to the southwest corner of sec. 36, T. 6 S., R. 7 W.; then north to the northwest corner of sec. 36, T. 6 S., R. 7 W.; then west to the southwest corner of sec. 26, T. 6 S., R. 7 W.; then north to the northwest corner of sec. 23, T. 6 S., R. 7 W.; then west to the southeast corner of sec. 18, T. 6 S., R. 7 W.; then north to the northeast corner of sec. 6, T. 6 S., R. 7 W.; then west to the southeast corner of sec. 31, T. 5 S., R. 7 W.; then north to the northwest corner of sec. 29, T. 5 S., R. 7 W.; then east to the northeast corner of sec. 29, T. 5 S., R.7 W.; then east to the southwest corner of sec. 22, T. 5 S., R. 7 W.; then north to northwest corner of sec. 22, T. 5 S., R. 7 W.; then to the southwest corner of sec. 14, T. 5 S., R. 7 W.; then north to the northwest corner of sec. 14, T. 5 S., R. 7 W.; then east to the northeast corner of sec. 13, T. 5 S., R. 6 W.; then south to the southeast corner of sec. 24, T. 5 S., R. 6 W.; then east to the northeast corner of sec. 30, T. 5 S., R. 5 W.; then south to the southeast corner of sec. 30, T. 5 S., R. 5 W.; then east to the northeast corner of sec. 32, T. 5 S., R. 5 W.; then south to the southeast corner of sec. 32, T. 5 S., R. 5 W.; then east to the northeast corner of sec. 5, T. 6 S., R. 5 W.; then south to the southeast corner of sec. 20, T. 6 S., R. 5 W.; then west to the northeast corner of sec. 30, T. 6 S., R. 5 W.; then south to the point of beginning.

(4) Beginning at the southeast corner of sec. 36, T. 2 N., R. 5 E.; then west to the northeast corner of sec. 4, T. 1 N., R. 5 E.; then south to the southeast corner of sec. 4, T. 1 N., R. 5 E.; then west to the southwest corner of sec. 4, T. 1 N., R. 5 E.; then south to the southeast corner of sec. 17, T. 1 N., R. 5 E.; then west to the south west corner of sec. 17, T. 1 N., R. 5 E.; then north to the northwest corner of sec. 27, T. 1 N., R. 5 E.; then west to the southwest corner of sec. 12, T. 1 N., R. 4 E.; then north to the northwest corner of sec. 12, T. 1 N., R. 4 E.; then east to northeast corner of sec. 12, T. 1 N., R. 4 E.; then north to the northwest corner of sec. 7, T. 2 N., R. 5 E.; then east to the northeast corner of sec. 12, T. 2 N., R. 5 E.; then south to the point of beginning.

* * * * *

Done in Washington, DC, this 20th day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–18844 Filed 7–25–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2009–0086]

RIN 0579–AD26

Importation of Shepherd's Purse With Roots From the Republic of Korea Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of fruits and vegetables to allow the importation of fresh shepherd's purse with roots from the Republic of Korea into the United States under a combination of mitigations to reduce the risk of introducing plant pests. As a condition of entry, the shepherd's purse will have to be produced in accordance with a systems approach that will include requirements for importation of commercial consignments, pest-free place of production, removal of soil, and inspection for quarantine pests by the national plant protection organization of the Republic of Korea. The shepherd's purse will also have to be accompanied by a phytosanitary certificate with an additional declaration stating that it was grown, packed, and inspected and found to be free of pests in accordance with the regulations. This action will allow the importation of fresh shepherd's purse with roots from the Republic of Korea while continuing to protect against the introduction of plant pests into the United States.

DATES: *Effective Date:* July 26, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Wayson, Regulatory Coordination Specialist, PPQ, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of the Republic of Korea has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh shepherd's purse with roots from the Republic of Korea to be imported into the United States. Prior to the publication of this final rule, shepherd's purse without roots has been authorized for entry into the United States from the Republic of Korea.

On October 12, 2010, we published in the **Federal Register** (75 FR 62484–62486, Docket No. APHIS–2009–0086) a proposed rule [1] to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh shepherd's purse with roots from the Republic of Korea into the United States under a combination of

[1] To view the proposed rule, PRA, RMD, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2009–0086.*

mitigations to reduce the risk of introducing plant pests. We prepared a pest risk assessment (PRA), titled ''Importation of Shepherd's Purse (*Capsella bursa-pastoris* (L.) Medik.) leaves and stems with roots from Republic of Korea into the United States, A Pathway-Initiated Risk Assessment'' (October 2007). The PRA evaluated the risks associated with the importation of shepherd's purse into the United States from the Republic of Korea. Based on the information contained in the PRA, APHIS has determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these quarantined areas. To recommend specific measures to mitigate those risks, we prepared a risk management document (RMD).

We solicited comments concerning the PRA and RMD for 60 days ending December 13, 2010. We received two comments by that date. They were from a private citizen and a State division of consumer services. Both comments were in general agreement with the proposed action; however, there were suggestions made regarding inspections.

One commenter suggested that in addition to being inspected for pests, that the shepherd's purse with roots be inspected for pesticide and herbicide residue.

While the United States does not have direct control over pesticides that are used on plant commodities such as shepherd's purse with roots in other countries, there are regulations in the United States concerning the importation of food to ensure that commodities do not enter the United States containing illegal pesticide residues. Through section 408 of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) has the authority to establish, change, or cancel tolerances for food commodities. These tolerances are the maximum levels of pesticide residues that have been determined, through comprehensive safety evaluations, to be safe for human consumption. Tolerances apply to both food commodities that are grown in the United States and food commodities that are grown in other countries and imported into the United States. While EPA has no authority in a foreign country, the tolerance levels are enforced once the commodity enters the United States. Federal Government food inspectors are responsible for monitoring food commodities that enter the United States to confirm that tolerance levels are not exceeded and that residues of pesticide chemicals that are banned in the United States are not present on the commodities. Tolerance levels for all chemicals that are acceptable for use on shepherd's purse may be found in EPA's regulations in 40 CFR 180.101 through 180.2020. Tolerance information can also be obtained at *http://www.epa.gov/pesticides/regulating/index.htm.*

One commenter stated that the pest risk assessment failed to mention any safeguarding measures against endoparasitic nematodes such as new races of the soybean cyst nematode (*Heterodera glycines*), rice root nematodes (*Hirschmanniella imamuri*), root knot nematode (*Meloidogyne* spp.), and lesion nematodes (*Pratylenchus thornei* and other unidentified *Pratylenchus* species).

We can only require safeguarding measures against organisms that are not known to be present in the United States and that we have determined present a risk to U.S. plants or plant products. Therefore, because *H. glycines* and *P. thornei* are already established in many parts of the United States, additional safeguarding measures are not required. Furthermore, we found no information about exotic races of *H. glycines* and *P. thornei* that occur in the Republic of Korea and are reported on shepherd's purse. If new information becomes available about particular *Heterodera* spp. and *Pratylenchus* spp., we will reevaluate the risks associated with this commodity and assign any new mitigation measures that we determine are necessary.

H. imamuri is not reported in the United States, but has been reported in certain areas of the Republic of Korea; however, we have no evidence that it is associated with shepherd's purse. By necessity, pest assessments focus on those organisms for which biological information is available. If new information becomes available about particular *Meloidogyne* spp. or other nematode pests that occur in the Republic of Korea and are associated with shepherd's purse, we will reevaluate the risks associated with this commodity and assign any new mitigation measures that we determine are necessary.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for shepherd's purse from the Republic of Korea is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

APHIS has determined that fresh shepherd's purse with roots can be safely imported from Korea into the United States under certain conditions. U.S. entities that could be affected by the final rule are domestic producers of shepherd's purse, and wholesalers that import fresh shepherd's purse. Based on our review of available information, APHIS does not expect the rule to have a significant economic impact on small entities. In the absence of significant economic impacts, we have not identified alternatives that would minimize such impacts.

Executive Order 12988

This final rule allows shepherd's purse with roots to be imported into the United States from the Republic of Korea. State and local laws and regulations regarding shepherd's purse with roots imported under this rule will be preempted while the plant is in foreign commerce. Fresh plant products are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0366.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–51 is added to read as follows:

§ 319.56–51 Shepherd's purse with roots from the Republic of Korea.

Shepherd's purse (*Capsella bursa-pastoris* (L.) Medick) with roots from the Republic of Korea may be imported only under the following conditions:

(a) The shepherd's purse with roots must be grown in a pest-free place of production that is registered with the national plant protection organization (NPPO) of the Republic of Korea. Fields must be certified free of the quarantine nematodes *Hemicycliophora koreana, Paratylenchus pandus, Rotylenchus orientalis,* and *Rotylenchus pini* by sampling and microscopic inspection of the samples by the NPPO of the Republic of Korea. The sampling and inspection protocol must be preapproved by APHIS.

(b) The shepherd's purse with roots must be free from soil.

(c) The shepherd's purse with roots must be imported in commercial shipments only.

(d) Each consignment of shepherd's purse with roots must be accompanied by a phytosanitary certificate of inspection issued by the NPPO of the Republic of Korea stating that the shipment has been inspected and found free of quarantine pests with an additional declaration stating that the shepherd's purse with roots has been produced and inspected in accordance with the requirements of 7 CFR 319.56–51.

(Approved by the Office of Management and Budget under control number 0579–0366)

Done in Washington, DC this 20th day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–18851 Filed 7–25–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 34

[Docket No. FAA–2011–0746]

Application of Regulations on Fuel Venting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy determination.

SUMMARY: This document advises the public of a recent decision by the Federal Aviation Administration (FAA) concerning the application of certain provisions of the regulations regarding fuel venting requirements.

DATES: We must receive your comments by August 25, 2011.

ADDRESSES: This is a notice of a policy determination only. You may send comments identified by Docket Number FAA–2011–0746 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Curtis Holsclaw, Office of Environment and Energy (AEE–2), FAA, 800 Independence Ave., SW., Washington, DC 20591; e-mail *Curtis.holsclaw@faa.gov,* facsimile (202) 267–5594, telephone (202) 267–3575.

SUPPLEMENTARY INFORMATION: Title 14 of the Code of Federal Regulations (14 CFR), part 34, § 34.11 is the regulation that prohibits fuel venting, the intentional discharge to the atmosphere of fuel drained from fuel nozzle manifolds after engines are shut down. By its terms, the regulation does not apply to normal fuel seepage from shaft seals, joints, and fittings.

During a recent aircraft certification, the FAA became aware of difficulties in applying the language of § 34.11 to the newest designs of aircraft engines. The Boeing Models 747–8, 747–8F, and 787 series airplanes incorporate new General Electric (GE) Model GEnx-2B and GEnx-1B engines, respectively. These GE engines include an advanced technology fuel system that significantly reduces fuel consumption and emissions. This technology incorporates the use of a larger, complex fuel manifold and a new fuel nozzle design that also uses check valves as an alternative to a fuel manifold drainage collection tank as a means to prevent release of fuel after shutdown. While this design reduces overall emissions, flight tests revealed an intermittent, inadvertent release of a small amount of

fuel after the engines were shut down. This release of fuel is caused by unexpected elevated fuel manifold pressures that result in the release of fuel from the fuel nozzles. Under certain atmospheric conditions this release of fuel results in a visible vapor. This event was not observed during the GEnx engine's certification testing under 14 CFR part 33, but only after it was installed and operated on the subject airplanes.

Following these observations, the FAA reconsidered how the provisions of § 34.11 should be applied under the circumstances of these certifications. A review of the history of the section found that it was promulgated in 1973 in response to short-sighted environmental practices of the time, including the routine dumping of up to a gallon of raw fuel onto the ground after engines were shut down. The general prohibition in § 34.11 is stated in the first sentence of that section, that ''[n]o fuel venting emissions shall be discharged into the atmosphere from any new or in-use aircraft gas turbine engine subject to the subpart.'' The second sentence appears to condition this prohibition, stating that ''[t]his paragraph is directed at the elimination of intentional discharge to the atmosphere of fuel drained from fuel nozzle manifolds after engines are shut down and does not apply to normal fuel seepage from shaft seals, joints, and fittings.'' The language of the second sentence presents a unique situation in aircraft certification by introducing the concept of intent, without clearly referencing where the intent attaches. The second sentence also specifies three locations where ''seepage'' is considered normal and acceptable.

Historically, application of § 34.11 has not been an issue. Aircraft engines designed since promulgation of the rule have not included any means by which fuel is collected and dispersed outside the engine after shutdown. The GEnx engines at issue do not release fuel from the three locations noted in the regulation—shaft seals, joints, or fittings. Nor does the amount of fuel or the manner in which it is being released rise to the level of historical fuel dumping that prompted the adoption of the regulation in 1973. Yet, small quantities of fuel (up to 5.5 ounces) are being released intermittently under certain conditions, and the fuel is being vaporized on contact with hot surfaces inside the engine, resulting in the visible fuel vapors that have been observed when they emit from either the inlet or exit plane of the engine.

The new engines incorporate technological advances and environmental performance improvements that were never envisioned when the original regulation was adopted in 1973. These factors have made it more difficult to reconcile the design and function of these engines in a certification context with a 38-year-old regulation that was aimed at a different set of circumstances. Application of the current regulation has become less clear in this context.

With the cooperation of the equipment manufacturers, the FAA investigated the safety and environmental effects of the fuel release and vaporization. The FAA consulted with the Environmental Protection Agency (EPA) on the local air quality impacts. While we were satisfied that no safety and minimal environmental effects are evident, we remain concerned about compliance with the intent of the current regulation, and the inability of the current regulation to be unambiguously applied to the certification situation.

The FAA has determined that the best course of action is to allow the current certification of these engine/airframe combinations. The certification basis includes requirements that the manufacturers develop and install modifications that will eliminate these intermittent fuel releases and observed vapors that have been experienced during certification testing. These modifications will apply to newly manufactured airplanes by December 31, 2012, and in-use airplanes by December 31, 2014.

The technological advances incorporated in these engines allow them to more than exceed the separate regulatory requirements for emissions that are the focus of current environmental compliance efforts. The FAA will re-examine the language of the fuel venting regulation and its application during certification to determine whether it needs to be changed to address issues associated with newer technologies. We may consult with the EPA on whether to propose changes to § 34.11 and its companion regulation at 40 CFR 87.11. We will also consider whether more flexibility in application of the regulation is appropriate based on the experience gained during this certification. The decision to proceed with certification of the subject airframe/engine combinations is an effort to acknowledge the lack of clarity in the application of the regulation to the specific circumstances encountered. The requirement to modify the aircraft is intended to prevent any retrenchment from the original regulatory intent.

Issued in Washington, DC, on July 14, 2011.

Lourdes Q. Maurice,

Executive Director, Office of Environment and Energy.

[FR Doc. 2011–18191 Filed 7–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0402; Directorate Identifier 2007–NM–165–AD; Amendment 39–16760; AD 2011–16–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747 Airplanes and Model 767 Airplanes Equipped With General Electric Model CF6–80C2 or CF6–80A Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires revising the airplane flight manual (AFM) to advise the flightcrew to use certain procedures during descent in certain icing conditions. This AD was prompted by reports of several in-flight engine flameouts, including multiple dual engine flameout events and one total power loss event, in ice-crystal icing conditions. We are issuing this AD to ensure that the flightcrew has the proper procedures to follow in certain icing conditions. These certain icing conditions could cause a multiple engine flameout during flight with the potential inability to restart the engines, and consequent forced landing of the airplane.

DATES: This AD is effective August 30, 2011.

ADDRESSES:

Examining the AD Docket

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

New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–917–6509; fax: 425–917–6590; e-mail: *rebel.nichols@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That SNPRM published in the **Federal Register** on August 4, 2010 (75 FR 46868). The original NPRM (73 FR 18721, April 7, 2008) proposed to require revising the airplane flight manual (AFM) to advise the flightcrew to use certain procedures during descent in certain icing conditions. The SNPRM proposed to revise the original NPRM by revising the text of the proposed AFM revision.

Other Relevant Rulemaking

Related AD 2010–16–03, Amendment 39–16379 (75 FR 47203, August 5, 2010), requires similar actions for Model MD–11 and MD–11F airplanes, certificated in any category, equipped with General Electric (GE) CF6–80C2 series engines. These airplanes have been determined to be subject to the identified unsafe condition addressed in this AD.

Comments

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

Request To Withdraw SNPRM

While GE Aviation (GE) recognized that the FAA has the ultimate responsibility in evaluating and declaring the existence of an unsafe condition, GE disagreed that an unsafe condition is likely to exist and refuted the FAA's basis for its determination. GE pointed out that there has never been a Model CF6–80C2 engine that has failed to relight rapidly, and that this fact is significant in that this is different from the field experience for some other turbofan engines of different design. GE pointed out that Note 11 of FAA-approved Type Certificate Data Sheet E13NE for Model CF6–80A engines includes the following statement: ''* * * momentary N_1 excursions below 40%, not to exceed 60 seconds durations, are permissible for approach and landing operation below 10,000 feet pressure altitude.'' For these reasons, GE contended that the data prove that a forced landing is extremely improbable, and, while the proposed changes in the SNPRM will provide additional margin against rare inclement weather-related flameouts, GE did not believe that the proposed changes should be mandated.

GE also agreed that, while there might be variation in operational costs among operators and a relatively small cost impact on an individual per-flight basis, there is a cumulative impact when applied to the more than 1,000 airplanes in the worldwide fleet. GE estimated that the proposed procedures would result in an environmental burden of tens of millions of pounds of carbon dioxide per year (estimate assumes an additional 50 gallons of fuel per flight × 20 pounds of carbon dioxide per gallon of fuel × 600,000 flights a year × an estimated 10 percent of flight descents in visible moisture). So, while the bleed does add some projected event rate benefit in certain circumstances, GE believes the extremely improbable rate of dual engine flameouts coupled with the adverse environmental impact outweigh the benefits of the proposed AFM procedure.

From these statements, we infer that GE requests that we withdraw the NPRM. We do not agree. We have evaluated the unsafe condition and find that sufficient data exist to demonstrate that certain icing conditions that cause the engine flameout could also cause engine damage that potentially would prevent an engine from relighting. The condition could exist on all of an airplane's engines, resulting in a forced landing. We have determined that an unsafe condition exists, and the appropriate vehicle for correcting an unsafe condition is an AD. These safety concerns must be addressed, even in light of the environmental impact. We have not changed the AD regarding this issue.

Request To Clarify Additional Flameout Event on Model 747 Airplane

GE referred to the ''Actions Since Original NPRM Was Issued'' section of the SNPRM, particularly the report of another significant flameout event on a Model 747 airplane. GE believes the mentioned event was actually a temporary power loss event that occurred in 2007, and that no more recent multi-engine inclement-weather-related events have occurred on a CF6-powered Model 747 airplane.

We agree to clarify. Any time a transport category airplane experiences power loss events resulting from a common cause on multiple engines, we consider it a significant event. Flameout events do cause power loss, but can also cause adverse engine operation, which can include engine stall and power rollback. Certain icing conditions that lead to flameouts could also cause compressor damage, preventing the engine from relighting. Loss of a single engine affects other aircraft systems—hydraulic, pressurization, and electrical—all of which are supplied by engine-driven components. There are backup systems, but relighting an engine in flight can still be difficult because of the distracting secondary effects of losing power. A multi-engine flameout compounds these factors. In November 2007, the airplane in the subject report sustained three multi-engine flameouts, including, at one point, a three-engine flameout. This multi-engine flameout event developed into much more than a simple power loss event. We have not changed the AD in this regard.

Request To Allow Use of Automatic Activation of Anti-Ice Systems

UPS asserted that the proposed AFM revision does not address airplanes with automatic anti-ice systems. UPS confirmed that a portion of their fleet is equipped with automatic nacelle and wing anti-ice systems, and questioned whether setting these systems in the ''auto'' position will satisfy the requirement to have nacelle and wing anti-ice systems on during descent.

From these statements, we infer that UPS is requesting that we revise the SNPRM to allow operators with airplanes equipped with automatic anti-ice systems to use the ''auto'' setting in lieu of manually activating the anti-ice systems. We do not agree. Automatic anti-ice systems or primary in-flight ice detection systems have been effective in detecting typical icing conditions, but they do not have the capability to detect ice-crystal icing. Therefore, the anti-ice systems would not be activated during these icing encounters, and would not provide an adequate level of safety in lieu of manual anti-ice activation in ice-crystal icing conditions. We have made no change to the final rule in this regard.

Requests To Revise AFM Procedure To Qualify Weather Conditions

Delta Airlines (Delta) requested that we revise the proposed AFM procedure to add the qualifier, ''when near convective weather systems, including thunderstorms.'' Japan Airlines (JAL) also requested that we include a similar statement. Delta stated that it

understands that the risk of flameout due to ice-crystal icing occurs only when the airplane is near convective weather systems, and explained that its flightcrews can recognize nearby convective weather. Delta contended that revising the AFM procedure to allow flightcrews to activate nacelle anti-ice when convective weather is near would prevent the unnecessary increase in fuel burn and overuse of engine anti-ice when engine flameouts due to ice crystals are not factors. JAL reasoned that, because operating the anti-ice systems increases the crew workload and fuel consumption, the weather conditions that require use of the anti-ice systems should be limited to areas where there is technical benefit of preventing engine flameout.

We do not agree. Ice-crystal icing does typically occur in or near convective weather. However, this type of icing does not appear on radar due to its low reflectivity, and neither the airplane ice detectors nor visual indications indicate the presence of this type of icing condition. Service experience has demonstrated that flightcrews are not always able to differentiate between ice-crystal icing that causes engine flameout and other types of visible moisture that typically do not lead to engine flameouts. Therefore, relying on flightcrews to recognize the necessary weather conditions might not provide an adequate level of safety. We have not changed the final rule in this regard.

Additionally, in regard to JAL's statement that anti-ice system operation increases fuel consumption, we have determined that the additional fuel burn necessitated by the AFM procedure would not be significant enough to warrant removal of the requirement to use anti-ice under certain conditions. However, as we explain under ''Requests to Allow Deactivation of Anti-ice Systems When Icing No Longer Exists,'' we have revised the procedure to allow anti-icing systems to be deactivated when the subject icing conditions no longer exist. This allowance will further reduce any additional fuel burn caused by the use of the anti-ice system.

Request for Additional Revision of AFM Procedure

JAL further requested that we revise the proposed AFM procedure to remove ''the wing anti-ice operation below 22,000 ft and above TAT 10 degree C.'' JAL explained that, in Asia, where most of the engine flameout events occurred, the total air temperature (TAT) at 22,000 feet is around 8 °Celsius (C) according to standard calculations, and that the ground temperature in southern Asia is estimated to be 32 °C. JAL further explained that static air temperature (SAT) decreases 2 degrees per every 1,000 feet; therefore, the SAT at 22,000 feet is −12 °C. Therefore, JAL states that, considering +20 °C ram effect in descent speed, TAT at 22,000 feet is approximately 8 °C. For these reasons, and because the flightcrew would be required to turn the anti-ice systems on and off in a very short time, JAL stated it believes that the use of wing anti-ice systems should not be included in the proposed AFM procedure, especially given the additional crew workload and the probability of a flameout.

We agree that clarification is necessary. It is not our intent to require activation of the wing anti-ice system at temperatures above TAT 10 °C. The required AFM procedure specified in this AD requires use of the anti-ice systems only when in visible moisture and a TAT of less than 10 °C. As explained under ''Requests to Allow Deactivation of Anti-ice Systems When Icing No Longer Exists,'' we have revised the required AFM procedure to allow anti-icing systems to be turned off when the specified icing conditions are no longer present or anticipated. No further change to this AD is necessary in this regard.

Requests To Allow Deactivation of Anti-Ice Systems When Icing No Longer Exists

Boeing and GE requested that we revise the proposed AFM procedure to allow anti-icing systems to be deactivated when the subject icing conditions no longer exist. Boeing and GE contended that this change would provide clarity and consistency with related rulemaking on Model MD–11 airplanes.

We agree. We have determined that there is no additional benefit to having the nacelle and wing anti-ice switched on once icing conditions are no longer present or anticipated. Therefore, we have revised the AFM text provided in paragraph (g) of this final rule accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

There are about 1,064 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision	1	$85	$0	$85	340	$28,900

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–16–02 The Boeing Company: Amendment 39–16760; Docket No. FAA–2008–0402; Directorate Identifier 2007–NM–165–AD.

Effective Date

(a) This AD is effective August 30, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747 airplanes and Model 767 airplanes, certified in any category, equipped with General Electric Model CF6–80C2 or CF6–80A series engines.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and rain protection.

Unsafe Condition

(e) This AD was prompted by reports of several in-flight engine flameouts, including multiple dual engine flameout events and one total power loss event, in ice-crystal icing conditions. We are issuing this AD to ensure that the flightcrew has the proper procedures to follow in certain icing conditions. These certain icing conditions could cause a multiple engine flameout during flight with the potential inability to restart the engines, and consequent forced landing of the airplane.

Compliance

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

Airplane Flight Manual (AFM) Revision

(g) Within 14 days after the effective date of this AD, revise the Limitations Section of the Boeing 747 or 767 AFM, as applicable, to include the following statement. This may be done by inserting a copy of this AD into the AFM.

''Prior to reducing thrust for descent in visible moisture and TAT less than 10 °C, including SAT less than −40 °C, nacelle anti-ice switch must be in the ON position. At or below 22,000 ft, wing anti-ice selector must be in the ON position. When these icing conditions (visible moisture and TAT less than 10 °C, including SAT less than −40 °C) are no longer present or anticipated, place the nacelle and wing anti-ice selectors in the OFF (or AUTO) position.''

Note 1: When a statement identical to that in paragraph (g) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Special Flight Permits

(h) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), may be issued to operate the airplane to a location where the requirements of this AD can be accomplished provided the operational requirements defined in the Limitations Section of the AFM are used if icing is encountered.

Related Information

(i) For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–917–6509; fax: 425–917–6590; e-mail: *rebel.nichols@faa.gov.*

Material Incorporated by Reference

(j) None.

Issued in Renton, Washington, on July 14, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–18747 Filed 7–25–11; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1209

[Notice 11–071]

RIN 2700–AD50

Boards and Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule makes nonsubstantive organizational changes to the NASA Inventions and Contributions Board (the Board) and removes and replaces obsolete references. The National Aeronautics and Space Administration (NASA) is amending its regulations by removing the reference to an obsolete NASA Management Instruction and to afford organizational flexibility to the Administrator in the functional placement of the Inventions and Contributions Board within the Agency without the need to amend the Code of Federal Regulations.

DATES: This direct final rule is effective September 26, 2011 unless the Agency receives significant adverse comments by midnight Eastern Standard Time on August 25, 2011.

ADDRESSES: Comments must be identified with ''RIN 2700–AD50'' and may be sent to NASA by the following method:

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Please note that NASA may post all comments on the Internet without change, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Helen M. Galus, Office of the General Counsel, NASA Headquarters, telephone (202) 358–3437, fax (202) 358–4341.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

NASA has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with NASA's management of the Board. NASA does not anticipate that this direct final rule will result in any changes in the functions, authority, or membership of the Board. NASA expects no opposition to the changes and no significant adverse comments. However, if NASA receives a significant adverse comment, the Agency will withdraw this direct final rule by

publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

Statutory Authority

The Board is established under the National Aeronautics and Space Act, as amended, 51 U.S.C. 20135(g). 51 U.S.C. 20136(a) authorizes the NASA Administrator to make monetary awards to any person for any scientific or technical contribution to NASA which is determined by the Administrator to have significant value in the conduct of aeronautical and space activities. Applications for such awards are referred to the Inventions and Contributions Board which transmits to the Administrator its recommendation as to the terms of the award. The functions, authority, and membership of the Inventions and Contributions Board are provided in NASA regulations at Title 14 of the Code of Federal Regulations, part 1209, subpart 4 (14 CFR 1209.400 *et seq.*).

Regulatory Analysis

Paperwork Reduction Act Statement

This final rule does not contain an information collection requirement that is subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12866 and Executive Order 13563

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 final 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.

Regulatory Flexibility Act

It has been certified that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule implements the internal procedures for the effective administration of the Board.

List of Subjects in 14 CFR Part 1209

Boards and committees.

Accordingly, 14 CFR part 1209 is amended as follows:

PART 1209—BOARDS AND COMMITTEES

Subpart 4—Inventions and Contributions Board

■ 1. The authority citation for part 1209 subpart 4 is revised to read as follows:

Authority: 51 U.S.C. 20135(g) and 20136.

■ 2. Section 1209.402 is revised to read as follows:

§ 1209.402 Responsibilities.

(a) *Waiver of rights in inventions.* Under the authority of 51 U.S.C. 20135(g) and pursuant to 14 CFR part 1245 subpart 1, the Board will receive and evaluate petitions for waiver of rights of the United States to inventions, accord each interested party an opportunity for a hearing, and transmit to the Administrator its findings of fact as to such petitions and its recommendations for action to be taken with respect thereto.

(b) *Monetary awards for scientific and technical contributions.* (1) Under the authority of 51 U.S.C. 20136 and pursuant to 14 CFR part 1240, the Board will receive and evaluate each application for award for any scientific or technical contribution to the Administration which is determined to have significant value in the conduct of aeronautical and space activities, will accord each applicant an opportunity for a hearing upon such application, and will then transmit to the Administrator its recommendation as to the amount of the monetary award and the terms of the award, if any, to be made for such contribution.

(2) If the contribution is made by a Government employee, the Board is also authorized to consider such contribution for award under the Incentive Awards Program and to make an award, if any, on its own cognizance, up to the amount of $10,000, in accordance with NASA supplements to Chapter 451 of the Federal Personnel Manual covering this subject.

■ 3. Section 1209.403 is revised to read as follows:

§ 1209.403 Organizational location.

The Board shall be established within an office or department of NASA as designated by the Administrator.

Charles F. Bolden, Jr.,

Administrator.

[FR Doc. 2011–18745 Filed 7–25–11; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

16 CFR Part 600

Statement of General Policy or Interpretation; Commentary on the Fair Credit Reporting Act

AGENCY: Federal Trade Commission.

ACTION: Final rule; rescission of commentary.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is rescinding its Statements of General Policy or Interpretations Under the Fair Credit Reporting Act (''FCRA''). Recent legislation transferred authority to issue interpretive guidance under the FCRA to the Consumer Financial Protection Bureau (''CFPB'').

DATES: *Effective Date:* July 26, 2011.

ADDRESSES: Copies of this document are available from: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Copies of this document are also available on the Internet at the Commission's Web site: *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Anthony Rodriguez, (202) 326–2757, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The FCRA [1] governs the collection, assembly, and use of consumer report information and provides the framework for the credit reporting system in the United States. The FTC has played a key role in the implementation, oversight, enforcement, and interpretation of the FCRA since its enactment in 1970. In May 1990, the Commission issued its Statement of General Policy or Interpretations under the FCRA, which included a comprehensive Commentary on the FCRA (the ''1990

[1] 15 U.S.C. 1681 *et seq.*

Commentary'').[2] The 1990 Commentary provided broad guidance on the Commission's interpretation of the provisions of the FCRA, but specified that the interpretations were not trade regulation rules or regulations and did not have the force or effect of statutory provisions.[3]

II. Basis for Removal of the 1990 Commentary

Since the publication of the 1990 Commentary, the FCRA has been amended several times in the ensuing years. The two most extensive amendments were the Consumer Credit Reporting Reform Act of 1996 (the ''1996 amendments'')[4] and the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'').[5]

The 1996 Amendments expanded the duties of consumer reporting agencies (''CRAs''), and also increased the obligations of *users* of consumer reports, particularly employers. Most significantly, the 1996 Amendments imposed duties on a class of entities not previously treated by the FCRA—*furnishers* of information to CRAs—by including requirements related to accuracy and the handling of disputes by the entities that provided information to CRAs.

In 2003, the FACT Act[6] further expanded the FCRA.[7] It added several sections to assist consumers and businesses in combating identity theft and reducing the damage to consumers when that crime occurred, including granting consumers the right to request free annual reports from nationwide CRAs. The Commission, often in conjunction with the Federal financial agencies, issued numerous rules to implement the various FACT Act provisions.[8]

As a result of these significant changes in the FCRA, as well as the passage of time, the 1990 Commentary has become partially obsolete.

In addition, on July 21, 2010, President Obama signed into law the Consumer Financial Protection Act of 2010 (''CFPA'').[9] Under the CFPA, much of the authority of the Commission and the Federal financial agencies to publish rules, regulations, or guidelines under the FCRA transfers to the CFPB. Although the CFPA provides for the transfer of existing regulations and guidelines to the CFPB, the Commission does not believe that it is appropriate to transfer the Commentary given its staleness. Indeed, in some respects, the Commentary is in conflict with the law as it has been amended. Accordingly, the Commission is rescinding 16 CFR 600.1, 600.2, and the Appendix to Part 600—Commentary on the Fair Credit Reporting Act.

Under 5 U.S.C. 553(b)(A), the requirement to provide prior notice and an opportunity for public comment does not apply to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. Further, under 5 U.S.C. 553(d)(2), the rescission may take effect immediately upon publication of this document in the **Federal Register**. Accordingly, the Commission rescinds 16 CFR 600.1, 600.2, and the Appendix to Part 600—Commentary on the Fair Credit Reporting Act, effective immediately.

III. Regulatory Flexibility Act

Because these statements of general policy and interpretations are not ''rules'' subject to the Regulatory Flexibility Act, *see* 5 U.S.C. 601(2), the Commission is not required to publish any initial or final regulatory flexibility analysis under the Regulatory Flexibility Act as part of such action. *See* 5 U.S.C. 603(a), 604(b).

List of Subjects in 16 CFR Part 600

Credit, Trade practices.

■ Accordingly, for the reasons set forth above, under the authority of 16 U.S.C. 1681s, the Commission amends Title 16, Chapter I, Code of Federal Regulations, by removing and reserving part 600.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–18688 Filed 7–25–11; 8:45 am]

BILLING CODE 6750–01–P

[2] 55 FR 18804 (May 4, 1990). The 1990 Commentary followed a proposal published in August 1988. 53 FR 29696 (Aug. 8, 1988). It included eight interpretations that the Commission had issued in the 1970s (former 16 CFR 600.1 through 600.8).

[3] 16 CFR 600.2, citing 16 CFR 1.73.

[4] Title II, Subtitle D, Chapter 1, of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Public Law 104–208 (Sept. 30, 1996).

[5] Public Law 108–159 (Dec. 4, 2003).

[6] *Id.*

[7] During the seven years between the 1996 Amendments and the FACT Act, there were a number of more modest revisions, the most significant of which was a 1999 amendment that specifically authorized the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, and National Credit Union Administration to promulgate regulations under the FCRA for the banks and other entities subject to their jurisdiction. Section 506 of the Gramm-Leach-Bliley Act (Pub. L. 106–102 (Nov. 12, 1999); FCRA § 621(e)).

[8] The Commission's FACT Act rules are listed on the agency Web site at *http://www.ftc.gov/os/statutes/fcrajump.htm.*

[9] Title X, Public Law 111–203 (Dodd-Frank Wall Street Reform and Consumer Protection Act).

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

[Docket No. CPSC–2010–0080]

Children's Products Containing Lead; Technological Feasibility of 100 ppm for Lead Content; Notice of Effective Date of 100 ppm Lead Content Limit in Children's Products

AGENCY: U.S. Consumer Product Safety Commission

ACTION: Notice of statutory requirement.

SUMMARY: Section 101(a) of the Consumer Product Safety Improvement Act (''CPSIA'') provides that, as of August 14, 2011, children's products may not contain more than 100 parts per million (''ppm'') of lead unless the Consumer Product Safety Commission (''CPSC,'' ''Commission,'' or ''we'') determines that such a limit is not technologically feasible. The determination can only be made after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products. On February 16, 2011, we conducted a public hearing to receive views from all interested parties about the technological feasibility of meeting the 100 ppm lead content limit for children's products and associated public health considerations. Through this document, we announce that children's products must meet the statutory 100 ppm lead content limit on August 14, 2011, unless otherwise excluded under CPSC regulations.[1]

DATES: The 100 ppm lead content limit for children's products is effective on August 14, 2011.

FOR FURTHER INFORMATION CONTACT: Dominique Williams, Directorate for Health Sciences, Consumer Product Safety Commission, Bethesda, MD 20814; telephone: (301) 504–7597; e-mail: *dwilliams@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

[1] The Commission voted 3–2 to publish this notice, without changes, in the **Federal Register**. Chairman Inez M. Tenenbaum, Commissioners Thomas Moore and Robert Adler voted to publish the notice. Commissioners Nancy Nord and Anne Northup voted against publication of the notice. Chairman Tenenbaum and Commissioners Nord and Northup filed statements regarding the vote. The statements may be viewed at *http://www.cpsc.gov/pr/statements.html.*

I. Background

Section 101(a)(2)(C) of the CPSIA (15 U.S.C. 1278a(a)(2)(C)) provides that, as of August 14, 2011, children's products may not contain more than 100 ppm of lead unless the Commission determines that such a limit is not technologically feasible. The Commission may make this determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products. Section 101(d) of the CPSIA (15 U.S.C 1278a(d)) provides that a lead limit shall be deemed technologically feasible with regard to a product or product category if:

(1) A product that complies with the limit is commercially available in the product category;

(2) technology to comply with the limit is commercially available to manufacturers or is otherwise available within the common meaning of the term;

(3) industrial strategies or devices have been developed that are capable or will be capable of achieving such a limit by the effective date of the limit and that companies, acting in good faith, are generally capable of adopting; or

(4) alternative practices, best practices, or other operational changes would allow the manufacturer to comply with the limit.

On July 27, 2010, we published a notice in the **Federal Register** (75 FR 43942), requesting comment and seeking information concerning the technological feasibility of meeting the 100 ppm lead content limit for children's products that are not otherwise excluded from the lead content limits under 16 CFR 1500.87 through 1500.91. After initial consideration of the comments and information received in response to the July 27, 2010 notice, we published a notice in the **Federal Register** (76 FR 4641) on January 26, 2011, announcing that we would be conducting a public hearing to receive views from all interested parties about the technological feasibility of meeting the 100 ppm lead content limit for children's products and associated public health considerations. The hearing was held on February 16, 2011. On March 9, 2011, we published another notice in the **Federal Register** (76 FR 12944), reopening the hearing record to allow hearing participants to submit relevant studies and supplementary data in response to additional questions from certain Commissioners.

Participants who submitted comments and hearing testimony regarding the technological feasibility of meeting the 100 ppm lead content limit and associated public health considerations included consumers, consumer groups, manufacturers, retailers, associations, and laboratories. Comments submitted in this proceeding are available at *http://www.regulations.gov*, under Docket No. CPSC–2010–0080. The video webcast of the hearing, as well as the presentations and written comments from the hearing, are available at the CPSC web site: *http://www.cpsc.gov/webcast/previous.html.* A transcript of the hearing and supplemental information provided by hearing participants are also available at *http://www.regulations.gov*, docket CPSC–2010–0080.

II. Technological Feasibility of 100 ppm

We evaluated the technological feasibility of the 100 ppm lead content limit for children's products based on available technical information, written public comments, public hearing oral comments, and other available information. CPSC staff's analysis regarding the technological feasibility of materials and products to meet the 100 ppm lead content limit is contained in the staff briefing package available on the CPSC Web site at: *http://www.cpsc.gov/library/foia/foia11/brief/lead100tech.pdf* and *http://www.cpsc.gov/library/foia/foia11/brief/100ppmlead.pdf.* We evaluated the technological feasibility of meeting the 100 ppm lead content limit in materials such as plastics, glass, and metals; reviewed the economic impacts of reducing the lead content limit from 300 ppm to 100 ppm; and considered the public comments received in this proceeding, including comments on public health protectiveness, economic burdens, availability of compliant materials, and variability in test results. Based upon this analysis, the staff could not recommend that the Commission make a determination that it is not technologically feasible for a product or product category to meet the 100 ppm lead content limit for children's products under section 101(d) of the CPSIA. No such determination has been made by the Commission. Therefore, all children's products sold, offered for sale, manufactured for sale, distributed in commerce, or imported for sale in the United States must meet the 100 ppm lead content limit beginning August 14, 2011 as statutorily mandated by the CPSIA unless otherwise excluded under 16 CFR 1500.87 through 1500.91. With respect to bicycles and related products and youth motorized recreational vehicles, a stay of enforcement regarding the lead content in certain parts, including metal components, is currently in effect until December 31, 2011 (76 FR 6765).

Dated: July 18, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–18510 Filed 7–25–11; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 39 and 140

RIN 3038–AD00

Process for Review of Swaps for Mandatory Clearing

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting regulations to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These regulations establish the process by which the Commission will review swaps to determine whether the swaps are required to be cleared.

DATES: Effective September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Special Counsel, 202–418–5096, *edonovan@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2010, the Commission published proposed regulations to implement certain provisions of the Dodd-Frank Act regarding the mandatory clearing of swaps.[1] The Commission is hereby adopting Regulation 39.5[2] to establish procedures for: (1) Determining the eligibility of a DCO to clear swaps; (2) the submission of swaps by a DCO to the Commission for a mandatory clearing determination; (3) Commission-initiated reviews of swaps; and (4) staying a clearing requirement.

Section 723(a)(3) of the Dodd-Frank Act provides that ''it shall be unlawful for any person to engage in a swap unless that person submits such swap

[1] *See* 75 FR 67277 (Nov. 2, 2010).

[2] Commission regulations referred to herein are found at 17 CFR Ch. 1.

for clearing to a derivatives clearing organization [(DCO)] that is registered under [the CEA] or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared.'' [3] The Commission's final regulations implement Section 723(a)(3), which also requires the Commission to adopt rules for the review of a swap, or group, category, type, or class of swaps (collectively, ''swaps'') to make a determination as to whether the swaps are required to be cleared. The final regulations also implement Section 745(b) of the Dodd-Frank Act, insofar as it directs the Commission to prescribe criteria, conditions, or rules under which the Commission will determine the initial eligibility or the continuing qualification of a DCO to clear swaps.[4]

II. Comments on the Notice of Proposed Rulemaking

The Commission received eighteen comments during the 60-day public comment period following publication of the notice of proposed rulemaking, and eight additional comments during the 30-day reopened public comment period that covered many of the Commission's rulemakings under the Dodd-Frank Act. The Commission considered each of these comments in formulating the final regulations.[5]

A. Swaps Listed for Clearing by a DCO Prior to the Enactment of the Dodd-Frank Act

Section 723(a)(3) of the Dodd-Frank Act provides that swaps listed for clearing by a DCO as of the date of enactment of the Dodd-Frank Act (referred to hereinafter as ''pre-enactment swaps'') shall be considered submitted to the Commission.[6] Once a swap is submitted to the Commission, the Commission must review it within 90 days to determine whether it is required to be cleared. Accordingly, Section 723(a)(3) required a Commission determination on pre-enactment swaps within 90 days after July 21, 2010, the date of enactment of the Dodd-Frank Act. However, before the deadline was reached, each DCO that was clearing pre-enactment swaps agreed to an extension of the deadline until after the Commission had adopted the regulations discussed herein.

In its comment letter, the American Federation of State, County and Municipal Employees (AFSCME) recommended that the Commission provide for public notice and comment for pre-enactment swaps in a manner similar to that put forward in the proposed regulations for the swaps that DCOs will submit going forward. CME Group, Inc. (CME) recommended that a DCO not be required to make any submission to the Commission for pre-enactment swaps or for swaps that a DCO cleared before the effective date of the clearing requirement. Sungard Energy & Commodities (Sungard) inquired as to whether pre-enactment swaps being considered submitted means that the DCO is not required to submit the supporting information required in proposed Regulation 39.5(b)(3), that the DCO is automatically eligible to clear the swap, and that the DCO is permitted to continue clearing while the Commission conducts its review.

In response to these comments, the Commission notes its intention to apply the final regulations to all swaps submitted or considered submitted to the Commission, including the pre-enactment swaps. Shortly after the enactment of the Dodd-Frank Act, Commission staff contacted those DCOs identified as clearing swaps and requested that they submit information similar to that which will be required under Regulation 39.5(b)(3). After the final regulations take effect and the Commission has verified that the previously submitted information is accurate and complete, the Commission will post the submissions for public comment as required. The Commission confirms that a DCO that is clearing pre-enactment swaps may continue to clear them and does not have to wait for a determination from the Commission as to whether the swaps are required to be cleared.

B. Eligibility of a DCO To Clear Swaps

Under Regulation 39.5(a), a DCO would be presumed eligible to accept for clearing any swap that is within a group, category, type, or class of swaps that the DCO already clears. This presumption of eligibility would be subject to Commission review, and if the Commission determines that the swap is not within a group, category, type, or class of swaps that the DCO already clears, the DCO would be required to request a determination by the Commission of its eligibility to clear the swap. A DCO that plans to accept for clearing any swap that is *not* within a group, category, type, or class of swaps that the DCO already clears also would be required to request a determination by the Commission of its eligibility to clear the swap. A swap generally would be considered to be ''within a group, category, type, or class of swaps that the DCO already clears'' if the terms of the swap are substantially similar to the terms of a swap, group, category, type or class of swaps that the DCO already clears, and clearing the swap will not require any changes to the DCO's risk management framework.

The Financial Services Roundtable (FSR) commented that a DCO's authority to clear swaps transactions should not be conditioned on its ability to clear the entire market volume of such swaps transactions, and therefore the reference to mandatory clearing should be deleted from Regulation 39.5(b)(3)(i). As proposed, Regulation 39.5 (b)(3)(i) required the DCO's submission to the Commission to include ''[a] statement that the [DCO] is eligible to accept the swap, or group, category, type or class of swaps for clearing and, if the Commission determines that the swap, or group, category, type, or class of swaps is required to be cleared, the [DCO] will be able to maintain compliance with section 5b(c)(2) of the Act.'' [7] Therefore, as FSR noted, the DCO would be required to have the ability to clear the entire market volume for any swap, or group, category, type or class of swaps that it planned to accept for clearing. In the final regulation, the Commission is maintaining the reference to mandatory clearing but revising Regulation 39.5(b)(3)(i) as follows (added text in italics): ''A statement that the [DCO] is eligible to accept the swap, or group, category, type or class of swaps for clearing and *describes the extent to which,* if the Commission were to determine that the swap, or group, category, type, or class of swaps is required to be cleared, the [DCO] will be able to maintain compliance with section 5b(c)(2) of the Act.'' The revised regulation would not require the Commission to find a DCO ineligible to clear a swap if the DCO is unable to clear the entire market volume of such swap transactions, but the Commission would take the DCO's inability to clear the entire market into consideration in determining whether the swap must be cleared.

The International Swaps and Derivatives Association (ISDA) asked the Commission to confirm that it

[3] *See* Section 2(h)(1)(A) of the CEA, 7 U.S.C. 2(h)(1)(A).

[4] *See* Section 5c(c)(5)(C)(iii) of the CEA, 7 U.S.C. 7a–2(c)(5)(C)(iii).

[5] The Commission also reviewed the proposed rule of the Securities and Exchange Commission concerning the process for submissions for review of security-based swaps for mandatory clearing. *See* 75 FR 82490 (Dec. 30, 2010).

[6] *See* Section 2(h)(2)(B)(ii) of the CEA, 7 U.S.C. 2(h)(2)(B)(ii).

[7] Section 5b(c)(2) sets out the core principles with which a DCO must comply to maintain its registration with the Commission.

intends for a DCO eligibility review to be separate from and precede a swap review, and that the intent is not to commence both reviews simultaneously. LCH.Clearnet Group (LCH) urged the Commission to de-couple the determination that a DCO may clear a swap from the determination that a swap should be subject to a mandatory clearing obligation. Similarly, Sungard asked for clarification as to whether a DCO can begin accepting a new swap for clearing once eligibility for clearing is established, independent of the review for mandatory clearing.

The Commission confirms that it intends for a DCO eligibility review to be separate from and precede a review of swaps that the DCO plans to accept for clearing. The Commission also confirms that a DCO may begin accepting a new swap for clearing once the DCO's eligibility for clearing is established and the submission requirements of Regulation 39.5(b) have been met, as discussed further below.

Michael Greenberger recommended that a DCO be required to state with specificity in its written request the sufficiency of its financial resources and its ability to manage the risks associated with clearing the swap. Chris Barnard stated that sufficient evidence indicating that the DCO would be able to maintain compliance with the requirements of section 5b(c)(2) of the CEA, or a CFTC review to determine the DCO's ability, should be required for all DCOs planning to accept swaps for clearing.

The Commission notes that it has proposed separate regulations that will impose new requirements on DCOs, including financial resources and risk management requirements, for maintaining compliance with the core principles applicable to DCOs set out in section 5b(c)(2).[8] Therefore, even if a DCO is presumed eligible, or determined to be eligible, to accept swaps for clearing, the Commission will be monitoring the DCO's eligibility on an ongoing basis through the requirements of those regulations.

C. A DCO's Notice to Its Members of a Swap Submission

Regulation 39.5(b)(3)(xi) requires a DCO's swap submission to include a ''description of the manner in which the [DCO] has provided notice of the submission to its members and a summary of any opposition to the submission expressed by the members.'' In the notice of proposed rulemaking, the Commission invited comment on whether the regulation should prescribe a specific manner in which a DCO must provide notice to its members, and whether the regulation should prescribe a specific period of time between the notice to members and the submission to the Commission to allow time for members to make their views on the submission known. Section 723(a)(3) of the Dodd-Frank Act only requires the DCO to provide notice to its members of the submission; it does not require the DCO to provide its members with the opportunity to comment.

The Air Transport Association of America (ATA) requested that the Commission require a DCO to provide in its submission a description of how the DCO has notified market participants of the submission and of any opposition expressed by such market participants. Although the Commission will accept public comment on the DCO's submission, ATA believes by that time the DCO may have made important, and sometimes irreversible, decisions with regard to its proposed clearing offering.

The Alternative Investment Management Association Limited (AIMA) stated that the Commission should require a DCO's members to pass on to their customers all details about a submission by the DCO to the Commission and encourage those customers to provide comments to the Commission.

Better Markets, Inc. suggested requiring a DCO to provide notice to the Commission and the public when considering clearing a new class of swaps, rather than only providing notice when a decision to submit has been made. Better Markets also recommended that the Commission require a DCO to solicit input from customers and the public to enable a full and fair consideration of a submission and to include member comments in support of a submission in addition to comments in opposition. Additionally, Better Markets commented that a DCO should be required to provide notice to the Commission and the public of a decision not to submit a swap for clearing, including comments for and against submission.

The FSR expressed the view that the DCO and its clearing members will be in the best position to determine appropriate notice and voting procedures with respect to these matters.

Freddie Mac recommended that the Commission require DCOs to provide pre-submission notice of any clearing proposal and a meaningful opportunity to comment to all interested stakeholders, rather than merely to the DCO's own members.

Mr. Greenberger suggested that it would be preferable for the regulations to prescribe a specific manner and timeline for notice, so that the notice is given with sufficient time and in the proper manner to gather all of the appropriate objections by DCO members.

IntercontinentalExchange, Inc. (ICE) observed that the requirement that a DCO provide to the Commission a summary of any opposition to a swap submission expressed by its members has the effect of creating two comment periods (including the Commission's 30-day public comment period), thus extending the timeline for a DCO to submit swaps for mandatory clearing. ICE proposed that the Commission adopt a 30-day comment period as sufficient for input from all members and require the DCO to include only a statement of any opposition from the DCO's board as part of its submission.

Mr. Barnard recommended that the Commission change the wording under Regulation 39.5(b)(3)(xi) and require the DCO to provide a summary of ''any comments on the submission expressed by the members'' rather than just ''any opposition to the submission expressed by the members,'' in order to promote fairness.

In response to these comments, the Commission is replacing the words ''opposition to'' with the words ''views on,'' revising the text of Regulation 39.5(b)(3)(xi) to read as follows: ''A description of the manner in which the [DCO] has provided notice of the submission to its members and a summary of any views on the submission expressed by the members.'' Further, the Commission clarifies that the regulations do not require a DCO to solicit the views of its members or the public on the submission, because all interested parties will have the opportunity to comment during the Commission's 30-day public comment period. However, if the members do make their views known directly to the DCO, the DCO is required to share a summary of that information with the Commission under Regulation 39.5(b)(3)(xi).

D. Public Comment Process for Swap Submissions

In the notice of proposed rulemaking, the Commission stated that, upon receiving a DCO's swap submission, the

[8] *See* 75 FR 63113 (Oct. 14, 2010) (financial resources); 75 FR 63732 (Oct. 18, 2010) (conflicts of interest); 75 FR 77576 (Dec. 13, 2010) (general regulations); 75 FR 78185 (Dec. 15, 2010) (information management); 76 FR 722 (Jan. 6, 2011) (governance); 76 FR 3698 (Jan. 20, 2011) (risk management); and 76 FR 13101 (Mar. 10, 2011) (participant and product eligibility).

Commission would begin its 90-day review by posting the submission on the Commission Web site for a 30-day public comment period, as required by the Dodd-Frank Act. The Commission invited comment regarding the appropriateness and sufficiency of providing notice of the submission on the Commission Web site as compared to publishing notice of the submission in the **Federal Register**.

AFSCME, Americans for Financial Reform, Mr. Greenberger, and Mr. Barnard recommended that the Commission publish submissions both on the Commission Web site and in the **Federal Register** to provide the fullest disclosure possible. ATA supported the Commission's use of its Web site to provide notice of submissions but recommended that, at the time a submission is posted, the Commission send a notification to the same subscribers that receive notifications of **Federal Register** notices. The Commission is accepting the recommendation to publish submissions both on the Commission Web site and in the **Federal Register**. Accepting this recommendation does not require any changes to the text of proposed Regulation 39.5(b)(4), which states that the submission ''will be made available to the public and posted on the Commission website.'' Publication of the submission in the **Federal Register** will make the submission available to the public, and the Commission will have a link to the **Federal Register** notice on its Web site.

In other comments on the public comment process for swap submissions, Freddie Mac recommended that the Commission extend the period for notice and comment beyond 30 days, and ISDA suggested that the Commission extend the public comment period to 45 days. The Commission has decided to keep the comment period at 30 days, the minimum required by the Dodd-Frank Act, because the Commission typically will have just 90 days to review the swap submission. The Commission is concerned that extending the comment period by regulation may not leave sufficient time for the Commission to carefully consider the comments received and conduct a thorough review. Nevertheless, the Commission expects that it will extend the comment period on a case-by-case basis, because the Commission is allowed to extend the 90-day review period if the submitting DCO agrees to an extension.

Finally, the National Milk Producers Federation (NMPF) commented that the regulations would invite DCOs to lay claim to swaps and categories of swaps, leaving all actual and potential future end users only 30 days to become aware of, and respond to, such claims. The Commission notes that all public comments received on a swap submission, not just the DCO's views, will be considered in making a mandatory clearing determination and, as discussed above, the Commission will allow more than 30 days for comments when possible on a case-by-case basis.

E. Contents of a DCO's Swap Submission

Regulation 39.5(b) sets out the process for DCOs to follow when submitting a swap, or group, category, type or class of swaps to the Commission, including what information a DCO must include in the submission to assist the Commission in its review.

In its comment letter, LCH encouraged the Commission to amend the supporting information requirements under Regulation 39.5(b)(3), such that a DCO is required to include in its submission only that information which is necessary for determining the suitability of a swap for clearing and the eligibility of a DCO to clear that swap. LCH believes that a DCO should not have to provide the information required to support the determination of whether a swap should be subject to a clearing requirement. LCH commented that the determination that a DCO may clear a swap should be separate from, and independent of, any determination that a swap should be subject to mandatory clearing. LCH recommended that certain words be deleted from the text of proposed Regulations 39.5(b)(3)(ii)(A),(C), and (D), and that proposed Regulation 39.5(b)(3)(viii) be deleted, because, in LCH's view, a DCO would not have access to the information required.

Similarly, CME commented that the Commission should limit the breadth of the submission required by a DCO seeking approval to clear a swap to only addressing whether clearing the swap comports with the DCO core principles. CME stated that the Commission's proposed regulations would impose costs and obligations that would effectively undermine the purposes of the Dodd-Frank Act and that, in effect, the Commission is attempting to charge a DCO that wishes to list a new swap with the obligation to collect and analyze massive amounts of information so that the Commission can perform its statutory duty of determining whether the swap should be subject to the mandatory clearing requirement. In a second comment letter, CME expressed concern that the regulations conflate the ''voluntary clearing determination'' and the ''mandatory clearing determination'' for swaps. CME also revised its earlier comments on the information required for the submission and recommended that the Commission delete proposed Regulations 39.5(b)(3)(ii), (vii), (viii), and (x) in their entirety and proposed Regulation 39.5(b)(3)(vi) in part.

In response to LCH and CME's comments, the Commission is deleting proposed Regulations 39.5(b)(3)(vii), (viii), and (x) in their entirety and proposed Regulation 39.5(b)(3)(vi) in part, and renumbering proposed Regulations 39.5(b)(3)(ix) and (xi) as Regulations 39.5(b)(3)(vii) and (viii), respectively, due to the removal of the other provisions. As a result of this revision, a DCO will only be required to submit information to the Commission, such as product specifications and risk management procedures, which a DCO should have gathered and considered in making its own decision to accept a particular swap for clearing. The Commission is also adding Regulation 39.5(b)(3)(ix), which would require a DCO to submit ''[a]ny additional information specifically requested by the Commission.'' This will allow the Commission to request any information not required by Regulation 39.5(b) if needed on a case-by-case basis.

The Commission is declining to delete Regulation 39.5(b)(3)(ii) or revise it in accordance with LCH's comments. Regulation 39.5(b)(3)(ii), as proposed, requires a DCO to submit to the Commission a ''statement that includes, but is not limited to, information regarding the swap, or group, category, type, or class of swaps that is-sufficient to provide the Commission a reasonable basis to make a quantitative and qualitative assessment of the following factors,'' and then lists the five factors set out in Section 723(a)(3) of the Dodd-Frank Act that the Commission is required to take into account in reviewing a swap submission. LCH had suggested editing these factors for purposes of the required statement. For example, LCH had suggested editing proposed Regulation 39.5(b)(3)(ii)(A), which reads ''[t]he existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data,'' to read as ''[t]he existence of adequate pricing data.'' The Commission does not believe it is appropriate to change the wording that is used in the Dodd-Frank Act.

Instead, in response to LCH's comments, the Commission is revising the introductory language of Regulation 39.5(b)(3)(ii) to read, in part: ''A statement that includes, but is not limited to, information that will assist

the Commission in making a quantitative and qualitative assessment of the following factors * * *.'' The Commission believes this change will require a DCO to address each of the five factors only to the extent that the DCO is reasonably able to do so. For example, with regard to the factor in Regulation 39.5(b)(3)(ii)(A) cited above, if LCH is only able to provide information regarding the existence of adequate pricing data, then that is the only information that LCH would be required to provide.

Some DCOs believe that certain swaps that are accepted for clearing may be obviously unsuitable for mandatory clearing and therefore a DCO should only have to submit swaps to the Commission for review at the discretion of the DCO or the Commission. The Dodd-Frank Act, however, does not give either the DCO or the Commission such discretion. As previously noted, a DCO is required to submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing, and the Commission is required to review each submission and determine whether clearing is required. Nevertheless, the Commission would encourage a DCO to use the statement required by Regulation 39.5(b)(3)(ii) to express its views as to whether the swaps being submitted should be subject to a clearing requirement.

The Commission believes it is necessary to clarify that a ''voluntary clearing determination'' is not required before a DCO may accept swaps for clearing. The Commission had expected that a DCO that wished to accept swaps for clearing would be permitted to do so after meeting the eligibility requirements of Regulation 39.5(a) and the submission requirements of Regulations 39.5(b) and 40.2,[9] the latter of which applies to DCOs accepting products for clearing by certification. Under Regulation 40.2, if the Commission has received the submission required under that section by the open of business on the business day preceding the product's acceptance for clearing, then the DCO may begin clearing the product as planned. However, the Commission recognizes that it would be burdensome to require a DCO to comply with two different submission requirements before it could accept swaps for clearing. Accordingly, the Commission has decided to eliminate the provision in Regulation 40.2 concerning DCOs and only require compliance with Regulation 39.5. The Commission has also added paragraph (b)(4) to Regulation 39.5 to require, like Regulation 40.2, that a DCO's submission must be received by the Commission by the open of business on the business day preceding the acceptance of the swap, or group, category, type, or class of swaps for clearing. This change clarifies that a DCO, which must be eligible or presumed eligible to clear any swap or group, category, type, or class of swaps that it plans to accept for clearing, may begin clearing such swaps shortly after it has made its submission to the Commission and does not have to wait until the Commission has made a determination on mandatory clearing.

In other comments regarding the DCO's swap submission, the American Benefits Council (ABC) recommended that the submission be required to include a specific analysis of the costs and burdens of clearing on market participants, and Better Markets proposed that the regulations clearly state that the additional statements and materials the DCO must include with its submission are not intended to increase the number of factors to be taken into account by the Commission in its review beyond the five factors set forth in the Dodd-Frank Act. The Commission believes a better approach to assessing the costs and burdens of clearing on market participants is by requesting public comment on the issue during its reviews of DCO swap submissions. The Commission also believes that the information that a DCO will be required to provide with its submission is clearly intended to aid the Commission in its assessment of the five factors set forth in the Dodd-Frank Act.

F. Group, Category, Type or Class of Swaps

Regulation 39.5(b)(2) encourages a DCO to submit swaps to the Commission by ''group, category, type or class of swaps,'' language taken from Section 723(a)(3) of the Dodd-Frank Act. Several commenters expressed concern about how ''group, category, type or class of swaps'' will be defined. The Coalition for Derivatives End-Users expressed concern that these groups or categories could be defined too broadly, without due consideration of the important differences between swaps within these groups or categories. ABC stated its opposition to the Commission adopting any clearing requirement that covers a group, category, type or class of swaps unless the Commission reviews each swap within the group, category, type or class and determines that each swap should be cleared.

How the Commission defines a particular group, category, type or class of swaps for purposes of a clearing requirement will be informed by: (1) How it is defined by the DCO in its submission (for those swaps submitted by a DCO); (2) the comments received by the Commission during the public comment period; (3) the five factors enumerated in the Dodd-Frank Act that the Commission is required to take into account; and (4) the Commission's own analysis during its review. The Commission will review each swap within a group, category, type or class of swaps to the extent the Commission believes it is necessary to make the proper determination on mandatory clearing.

G. Factors the Commission Must Take Into Account When Reviewing Swaps

Section 723(a)(3) of the Dodd-Frank Act requires the Commission, in reviewing a swap or swaps on its own initiative, or a swap submission, to take into account the following factors, also set out in Regulation 39.5(b)(3)(ii): (1) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data; (2) the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded; (3) the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract; (4) the effect on competition, including appropriate fees and charges applied to clearing; and (5) the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

In a comment letter, AIMA expressed its view that the third factor, the effect on the mitigation of systemic risk, should override other considerations. Better Markets proposed that the regulations make clear that a given level of contract-specific systemic risk avoided by mandatory clearing does not constitute a threshold for a determination by the Commission because the Dodd-Frank Act in no way suggests that only contract types that by themselves pose a risk to the financial system should be cleared.

The Coalition for Derivatives End-Users urged the Commission to give significant weight to a swap's liquidity in assessing whether that swap should

[9] The Commission has proposed to amend Regulation 40.2 to implement certain provisions of the Dodd-Frank Act. *See* 75 FR 67282 (Nov. 2, 2010).

be subject to mandatory clearing and to consider the link between the clearing requirement and the trading requirement. The FSR requested that the Commission consider the changes in the trading market structure being effected by the Dodd-Frank Act and related regulations in evaluating mandatory clearing decisions. The FSR is concerned that a trading system that limits participation will also reduce liquidity in the system because, due to the trading requirements for cleared swaps, counterparties will not have the option to complete trades off-exchange when on-exchange trading is unattractive or unavailable.

ISDA provided detailed comments on each of the five factors and encouraged the Commission to interpret these criteria strictly. Sungard proposed that the Commission apply some form of concentration test in determining whether a swap should be mandated for clearing out of concern that if the market for a swap is too heavily concentrated in the hands of a few market makers on the supply side, or a handful of hedgers or speculators on the demand side, such concentration would hamper discovery of the market clearing price and impose liquidity risk on the DCO.

CME commented that the proposed regulations do not state how the Commission will decide which swaps will be subject to a clearing requirement. CME believes that the Commission is required to make public how it will make this critical determination, because it would allow market participants to anticipate which swaps will be required to be cleared and may incentivize market participants to voluntarily submit those swaps for clearing in advance of any requirement that they be submitted for clearing.

The National Corn Growers Association (NCGA) and Natural Gas Supply Association (NGSA) encouraged the Commission to acknowledge that swaps that are not liquid over their full terms should not be required to be cleared because such swaps do not meet the Dodd-Frank Act's requirement of trading liquidity for swaps to be subject to the mandatory clearing requirement. In particular, NCGA and NGSA suggested that the Commission acknowledge that it will not require illiquid long-term swaps to be split up into various components in order to extract one or more clearable components, since the Dodd-Frank Act provides no authority for such a requirement.

As required by the Dodd-Frank Act, the Commission will take each of the five factors and the information submitted by the DCO into account when making a mandatory clearing determination, as well as these comments and any comments received during the public comment period that will be a part of each review. The Commission does not believe it would be appropriate to address these comments at this time, as they are beyond the scope of the regulations.

H. Commission-Initiated Reviews of Swaps

Section 723(a)(3) of the Dodd-Frank Act and Regulation 39.5(c) require the Commission, on an ongoing basis, to review swaps that have not been accepted for clearing by a DCO to make a determination as to whether the swaps should be required to be cleared.

AIMA suggested that it may be desirable to have a set frequency of reviews that the Commission must carry out, and that parties other than DCOs be allowed to request that the Commission initiates a review. AIMA recommended the Commission use the same criteria to assess a swap under a Commission-initiated review as it would for a DCO-submitted review. Finally, AIMA opined that there should be no prohibitions placed on trading a swap that would be subject to a mandatory clearing requirement if a DCO existed to clear the contract, and requested greater clarity as to possible solutions the Commission will consider to encourage DCOs to begin clearing a new class of swaps.

The Commission does not think it would be prudent to have a set frequency of Commission-initiated reviews at this time. The Commission anticipates that the initial mandatory clearing determinations would only involve swaps that are either already being cleared or that a DCO wants to clear. Once those determinations are made, the Commission will be in a better position to assess that portion of the swaps market that remains uncleared. The Commission can confirm that it will use the same criteria to assess a swap for both Commission-initiated and DCO-submitted reviews, and encourages all parties to make recommendations as to swaps that would be appropriate for a Commission-initiated review. Finally, the Commission notes that, under Regulation 39.5(c)(3), for any swap that would otherwise be subject to a clearing requirement except that no DCO has accepted it for clearing, the Commission may ''take such actions as the Commission determines to be necessary and in the public interest * * *,'' and it will make such determinations on a case-by-case basis, after taking into consideration any comments received pursuant to the 30-day public comment period provided for in Regulation 39.5(c)(2).

I. Capital and Margin Requirements for Uncleared Swaps

Regulation 39.5(c)(3)(iii) provides that, if the Commission identifies a swap or group, category, type, or class of swaps that would otherwise be subject to a clearing requirement except that no DCO has accepted it for clearing, the Commission may take such actions as it ''determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.'' This language is taken directly from Section 723(a)(3) of the Dodd-Frank Act.[10]

ISDA sought clarification that the Commission's authority is restricted to requiring the retention of adequate margin or capital only for swap transactions that are not otherwise exempt from the clearing requirements. First, the Commission notes that, with respect to swap dealers and major swap participants, it will not impose margin or capital requirements under Regulation 39.5(c)(iii) that differ from final Commission regulations on margin or capital for uncleared swaps.[11] Further, the Commission does not foresee that it would take action under Regulation 39.5(c)(3)(iii) to impose margin or capital requirements on any swap counterparty permitted, under final Commission regulations, to exercise the end-user exception to mandatory clearing of swaps.[12]

J. Stay of Clearing Requirement

Under Regulation 39.5(d), after making a determination that a swap or group, category, type, or class of swaps is required to be cleared, the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing

[10] Section 731 of the Dodd-Frank Act (Section 4s(e)(1) of the CEA) requires rules imposing capital and margin for bank swap dealers and bank major swap participants to be set jointly by prudential regulators and gives the Commission authority to adopt rules imposing capital and margin for non-bank swap dealers and non-bank major swap participants. The Commission would consult with the prudential regulators before taking action under Regulation 39.5(c)(3)(iii).

[11] The Commission has proposed margin and capital requirements for certain swap dealers and major swap participants. *See* 76 FR 23732 (Apr. 28, 2011) (Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants) and 76 FR 27802 (May 12, 2011) (Capital Requirements of Swap Dealers and Major Swap Participants).

[12] The Commission has proposed requirements governing the end-user exception to mandatory clearing of swaps. *See* 75 FR 80747 (Dec. 23, 2010).

requirement until it completes a review of the terms of the swap and the clearing arrangement. Upon completion of the review, the Commission could determine, subject to any terms or conditions as the Commission determines to be appropriate, that the swap must be cleared, or that the clearing requirement will not apply but clearing may continue on a non-mandatory basis.

FHLB suggested that the right to request a stay would be more meaningful for market participants if the regulation enumerated certain factors that the Commission will consider in granting such a stay or an exemption from the clearing requirement. FHLB recommended that the Commission consider the following factors: DCO credit risk, lack of relationships with DCO clearing members, and unique/special characteristics of transactions.

The FSR noted that there is no discussion in the Dodd-Frank Act or the notice of proposed rulemaking with respect to the time period for the issuance of the stay after an application has been made and believes a delay in the issuance of such a stay would defeat the purpose of the mechanism, especially in circumstances where complying with a mandatory clearing requirement may not be feasible. The FSR encouraged the Commission to adopt a policy to issue a stay within one business day of any request for a stay, unless the request on its face appears to be frivolous, so as to avoid any lengthy market disruption while the Commission determines whether the stay should be granted. Additionally, because the Commission may stay a mandatory clearing requirement on its own initiative, the FSR recommended that the Commission allow DCOs, DCMs, and SEFs to request a stay, because these entities will be in key positions to identify developing market disturbances related to mandatory clearing.

Mr. Greenberger commented that a counterparty's written request for a stay should be very specific and the involvement of the DCO in aiding the investigation should be substantial.

ISDA suggested that the clearing requirement should be stayed in the following circumstances: In the absence of competition; when there is an unresolved clearing member default at the only DCO then clearing the relevant product; when no DCO has elected to clear the product; or when a product becomes so illiquid as to threaten the DCO's ability to calculate margin or manage defaults.

The Commission does not believe it would be prudent to enumerate the factors that it would consider in determining whether to stay a clearing requirement. Doing so could potentially limit the Commission's ability to respond to unforeseen or unusual circumstances. Likewise, the Commission is declining to adopt a deadline by which it must respond to a request for a stay. The Commission would respond to such requests in a timely manner and, if any situation developed that would necessitate the immediate staying of a clearing requirement, the Commission would not be required to await a request for a stay in order to take action. Finally, the Commission notes that it would expect to consult with DCOs, DCMs, and SEFs as appropriate before it would stay a clearing requirement.

K. Additional Comments

The Commission received many comments that did not pertain to the aspects of the regulations discussed above. In particular, many of these comments related to the clearing of swaps in general, rather than the process for review of swaps for mandatory clearing.

ABC expressed concern that, if a clearing mandate is too broad, entities could be precluded from customizing swaps to hedge very specific risks. ABC encouraged the Commission to clarify that it would not constitute illegal evasion for an entity to enter into a swap that would be subject to a clearing mandate but for the fact that the swap contains a unique tailored term adopted for a bona fide business or investment reason, even if that term prevented the swap from being accepted for clearing by any DCO.

The Coalition for Derivatives End-Users urged the Commission to avoid regulations that would serve to discourage end-users from using customized transactions, and thereby preserve end-users' ability to enter into transactions that are tailored to meet specific economic and accounting objectives.

The FSR stated that the need to establish appropriate hedges may require financial entities to enter into transactions that are similar to swaps that are subject to a mandatory clearing requirement, but are not themselves eligible for clearing. In such circumstances, the FSR believes the presumption should be that the terms of the swap were determined to support the hedge and not to evade the mandatory clearing requirement. In addition, the FSR encouraged the Commission to provide exemptions from the clearing requirement for any swaps entered into prior to the adoption of the relevant clearing requirement due to the costs and burdens involved in transitioning swaps into a clearing arrangement, especially where such swaps have terms that differ from the standardized terms established by the DCO for cleared swaps. Lastly, the FSR expressed its belief that the Commission needs to address whether entering into amendments to, and assignments and novations of, existing swap transactions will be considered to be ''engaging in a swap,'' which could require them to be cleared.

Freddie Mac urged that the Commission should clarify that the Dodd-Frank Act requires parties to a swap subject to the clearing requirement to submit a swap for clearing but does not require parties to terminate or unwind swaps that fail to clear. Freddie Mac believes that the uncertainty of whether a swap may be terminated after execution would increase systemic risk and that allowing uncleared swaps subject to mandatory clearing to become OTC swaps would reduce uncertainty and not substantially increase systemic risk.

The Financial Services Agency of the Government of Japan asked the Commission to confirm that, as the Commission phases in the central clearing requirement, it would only be applied if both parties of such swaps are U.S. institutions. If this treatment could not be made permanent, at the very least they would formally request that such a transitional arrangement be made until the end of 2012.

NCGA and NGSA stated that the Commission should clarify in its final rule that, after the mandatory clearing provisions go into effect, a determination that a swap is required to be cleared will not apply retroactively to swaps that are open as of the date of such determination. They believe that retroactive application would impose substantial undue logistical burdens and transactional costs on market participants by requiring them to reexamine their portfolios each time a new determination is made and then arrange with counterparties to have affected swaps transferred for clearing.

NMPF recommended that the process for reviewing swaps for mandatory clearing not be so heavily weighted toward a determination that swaps be mandatorily cleared. NMPF believes that DCOs have an interest in such a determination, and will have the preponderance of input in a 90-day determination process. Thus NMPF believes that weight must be put on the other side for the process to be fair.

In addition to the comments discussed above, the Commission

received multiple comments recommending that the Commission exempt interaffiliate transactions from mandatory clearing, and offering thoughts on how the Commission should implement a clearing requirement. The Commission notes that all of these comments go beyond the limited scope of these regulations, and it will consider how to address them outside of this rulemaking.

L. Effective Date

Upon the effective date of this rule: (1) Any swap or group, category, type, or class of swaps listed for clearing by a DCO shall be considered submitted to the Commission, in accordance with Section 2(h)(2)(B)(ii) of the CEA; (2) the Commission will review the submissions and make the required determinations under Sections 2(h)(2)(B)(iii), (C), and (D); (3) the Commission may initiate its own reviews under Section 2(h)(2)(A); and (4) DCOs shall submit swaps that they plan to accept for clearing under Section 2(h)(2)(B)(i), and the Commission will review the submissions and make the required determinations under Sections 2(h)(2)(B)(iii), (C), and (D).

III. Cost-Benefit Considerations

Section 15(a) of the CEA [13] requires the Commission to consider the costs and benefits of its action before promulgating a regulation under the CEA. Section 15(a) specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas and it may determine that, notwithstanding its costs, a particular rule is necessary to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.[14]

The Commission invited but did not receive public comments specific to its cost-benefit estimates and considerations within the initial comment period following the publication of the Commission's notice of proposed rulemaking. The Commission also invited the public ''to submit any data or other information that [it] may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.'' The Commission received no such data or other information. The Commission did, however, receive comments generally discussing the ''burden'' associated with the submission process proposed in this regulation.

The Commission has considered the costs and the benefits of these final regulations, as amended below, in light of each area of public concern specified in Section 15(a) of the CEA. In this regard, the Commission would like to note that it has discussed the costs and benefits of its regulations throughout the narrative discussion of its regulations above and generally views the cost-benefit considerations of this final rulemaking to be an extension of that discussion. The Commission would also like to note that its Paperwork Reduction Act estimates have informed its analysis of the costs of the final regulations and that any information collection costs have been considered an important component of the overall compliance costs associated with final Regulation 39.5.

Consideration of the five broad areas is set out immediately below, followed by a discussion of the comments received in response to the proposal that relate to the costs and benefits of the regulations. The Commission has determined that the public benefits associated with each of its final regulations promulgated in this release outweigh the costs.

1. Protection of Market Participants and the Public

This regulation provides an orderly framework for determining the eligibility of a DCO to clear swaps that it plans to accept for clearing; for DCOs submitting swaps to the Commission for review; for Commission-initiated reviews of swaps; and for staying a clearing requirement. An orderly framework for such a review and determination reduces uncertainty while collecting relevant information in order to make an informed decision, which protects all market participants.

Maintaining the Commission's prerogative to engage in Commission-initiated reviews may also enhance risk management for the financial system as a whole because it will encourage parties to swap transactions to seek to have their swaps cleared, rather than face the uncertainty of not knowing what action the Commission may take at the conclusion of its review.

Lastly, the notice of proposed rulemaking required DCOs to include various types of information in their submissions, including an analysis of the effect of a clearing requirement on the market ''including the potential effect on market liquidity, trading activity, use of swaps by direct and indirect market participants, and any potential market disruption.'' This final regulation eliminates some of these requirements, thereby transferring the responsibility to collect and analyze this information to the Commission. The Commission has determined that this approach will provide the same benefits to market participants and the public while being less costly for DCOs.

2. Efficiency, Competitiveness, and Financial Integrity of the Markets

The final regulations require a DCO to submit swaps to the Commission ''to the extent reasonable and practicable to do so, by group, category, type or class of swaps.'' The Commission believes this will make the review process more efficient, allowing the Commission to move more swaps into clearing quickly, which in turn will promote clarity in the markets and contribute to their efficiency and integrity.

The final regulations also provide an opportunity for the public to comment on DCO submissions and require DCOs to relay both negative and positive feedback they receive from market participants. To the extent that the feedback summarized by DCOs is complete and accurate or that the public submits feedback directly to the Commission, this provides ample opportunity for broad input into mandatory clearing decisions. This greater transparency and public participation increases the likelihood that all important costs and benefits of mandatory clearing will be identified and weighed by the Commission.

3. Price Discovery

The process outlined in the regulations will move more swaps into clearing, which will facilitate price discovery in the swap markets.

4. Sound Risk Management Procedures

The proposed regulations also required DCOs to obtain independent validation of the scalability of their ''risk management policies, systems, and procedures, including the margin methodology, settlement procedures, and default management procedures.'' The Commission finds that this would increase cost to DCOs and has determined that there is an alternative that will be less costly and will likely achieve similar benefits. Specifically,

[13] 7 U.S.C. 19(a).

[14] *See, e.g., Fisherman's Doc Co-op., Inc* v. *Brown, 75 F.3d 164 (4th Cir. 1996); Center for Auto Safety* v. *Peck,* 751 F.2d 1336 (DC Cir. 1985) (noting that an agency has discretion to weigh factors in undertaking cost-benefit analysis).

DCOs will be required to evaluate the scalability of their risk management policies, systems, and procedures to comply with the DCO core principles and additional proposed risk management regulations that may be promulgated.

5. Other Public Interest Considerations

An orderly framework for the review of swaps and determination on mandatory clearing will facilitate moving swaps quickly into clearing, which is likely to reduce risk to the financial system.

Public comments. In its notice of proposed rulemaking, the Commission solicited comment from the public.[15] Comments relating to costs and benefits are summarized below, together with corresponding responses.

The National Milk Producers Federation suggested that small farmers will bear a disproportionate share of the costs associated with mandatory clearing. The subject of this rulemaking is not the costs to small farmers associated with mandatory clearing but the process a DCO must follow in order to submit a swap or group, category, type, or class of swaps to the Commission for a determination as to whether the swap must be cleared. Moreover, the National Milk Producers Federation did not specify how and to what extent this disproportionate cost will manifest itself. In this final regulation, the Commission has determined that an orderly review of swaps, a review mandated by Congress, reduces risk and increases certainty and therefore will reduce costs by making sure such swaps are quickly and properly vetted. Furthermore, the Commission has considered these concerns and believes that they should be addressed as each swap or group, category, type, or class of swaps is considered for mandatory clearing. The regulations create an opportunity for these concerns to be raised by the public for a period of 30 days as each swap submission is being reviewed. If there are particular swaps for which members of the public believe this concern is relevant, they are encouraged to bring that to the Commission's attention during the public comment period and these factors will be weighed as decisions about mandatory clearing are made. In addition, the Commission has proposed separate regulations that create an exception to mandatory clearing for end users, which may address some of these concerns.

CME commented that the information required in the proposed regulations would be costly for the DCOs to gather and analyze. This concern has been addressed in the final regulations by eliminating the requirements that DCOs submit independent validation of the scalability of their risk management policies, systems, and procedures, and by eliminating the requirement that DCOs conduct an analysis of the effect of a clearing requirement on the market. The final regulations now only require the submission of some of the information that the Commission assumes a DCO would have gathered and considered in making its own decision to accept a particular swap for clearing.

The Coalition for Derivative End-Users, expressed concern that central clearing and required margins for cleared swaps will be expensive for market participants and could be considered an inefficient use of resources. These comments are beyond the scope of this rule, which focuses exclusively on the process for reviewing swaps.

The Coalition for Derivative End-Users also expressed concern that the indirect as well as the direct costs of mandatory clearing should be considered when reviewing swaps. The Commission agrees that it is important to take the full range of costs as well as the benefits into account when considering mandatory clearing of a swap. As previously noted, the regulations establish a public comment process through which those costs and benefits may be raised and given due consideration. If there are any ancillary costs related to mandatory clearing of a specific swap or group, category, type, or class of swaps that the public believes are either unlikely to be recognized or particularly problematic, the Commission encourages comments to that effect. Comments that quantify the referenced costs or that offer specific scenarios are particularly helpful in that regard.

The Coalition for Derivative End-Users further suggested that the high cost to a DCO of submitting a swap to the Commission will put U.S.-based DCOs at a competitive disadvantage to foreign DCOs. The Coalition for Derivative End-Users did not illustrate how and to what extent a U.S.-based DCO will be disadvantaged nor specify to what extent non-U.S.-based DCOs offer the similar functionality, liquidity or risk profiles in comparison to U.S.-based DCOs. However, concerns over the costs of submission have been addressed in the final regulations by reducing the DCO's submission requirements and the attendant costs.

Freddie Mac expressed concern that uncertainty about whether swaps that are rejected for clearing by DCOs have to be unwound could generate losses for organizations using those swaps for hedging purposes. This concern goes beyond the limited scope of these regulations, and the Commission will consider how to address it outside of this rulemaking.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies, in promulgating rules, to consider whether those rules will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[16] The rules adopted herein will affect DCOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[17] The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.[18] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these rules will not have a significant economic impact on a substantial number of small entities. The Chairman made the same certification in the proposed rulemaking,[19] and the Commission did not receive any comments on the RFA in relation to the proposed rulemaking.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)[20] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. This rulemaking imposes new collection of information requirements within the meaning of the PRA. Accordingly, the Commission requested, but the Office of Management and Budget (OMB) has not yet assigned, a control number for the new collection of information. However, OMB has assigned the reference number 201011–3038–002 in the interim. The

[15] *See* 75 FR 67277, 67278 (Nov. 2, 2010).

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

[17] 47 FR 18618 (Apr. 30, 1982).

[18] *See* 66 FR 45605, 45609 (August 29, 2001).

[19] *See* 75 FR 67277, 67280 (Nov. 2, 2010).

[20] 44 U.S.C. 3501 *et seq.*

Commission has submitted this final rule along with supporting documentation for OMB's review. Responses to this collection of information will be mandatory.

The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information Provided by Reporting Entities/Persons

These regulations require DCOs to collect and submit to the Commission information concerning swaps they plan to accept for clearing. The Commission is adopting these information collection requirements in order to give effect to certain provisions of the Dodd-Frank Act.

Each DCO will determine for itself whether and how often it will accept a new swap or group, category, type, or class of swaps for clearing, which will require a submission of the required information to the Commission. The regulations direct DCOs to submit swaps to the Commission, to the extent reasonable and practicable to do so, by group, category, type, or class of swaps, thereby reducing the number of submissions a DCO would be required to make. The Commission's notice of proposed rulemaking therefore estimated one annual response per respondent. Commission staff estimated that each DCO would expend 40 hours to prepare each filing required under the proposed regulations, which was estimated based on the Commission's prior experience with DCOs and their preparation of filings for the Commission's review. This burden may be reduced under the final regulations, which do not require a DCO to include as much information in its submission as the proposed regulations would have. Commission staff estimated that it would receive filings from up to 12 respondents annually, which assumes that each DCO would make an average of one filing per year. Accordingly, the burden in terms of hours would in the aggregate be 40 hours annually per respondent and 480 hours annually for all respondents.

Commission staff estimated that each respondent could expend up to $4000 annually, based on an hourly wage rate of $100, to comply with the proposed regulations. This would result in an aggregated cost of $48,000 per annum (12 respondents × $4,000).

2. Information Collection Comments

The Commission did not receive any comments on the PRA in relation to the proposed rulemaking.

List of Subjects

17 CFR Part 39

Business and industry, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organization and functions (Government agencies).

For the reasons stated in the preamble, amend 17 CFR parts 39 and 140 as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

■ 2. Redesignate § 39.5 as § 39.8 and add new § 39.5 to read as follows:

§ 39.5 Review of swaps for Commission determination on clearing requirement.

(a) *Eligibility to clear swaps.* (1) A derivatives clearing organization shall be presumed eligible to accept for clearing any swap that is within a group, category, type, or class of swaps that the derivatives clearing organization already clears. Such presumption of eligibility, however, is subject to review by the Commission.

(2) A derivatives clearing organization that wishes to accept for clearing any swap that is not within a group, category, type, or class of swaps that the derivatives clearing organization already clears shall request a determination by the Commission of the derivatives clearing organization's eligibility to clear such a swap before accepting the swap for clearing. The request, which shall be filed electronically with the Secretary of the Commission, shall address the derivatives clearing organization's ability, if it accepts the swap for clearing, to maintain compliance with section 5b(c)(2) of the Act, specifically:

(i) The sufficiency of the derivatives clearing organization's financial resources; and

(ii) The derivative clearing organization's ability to manage the risks associated with clearing the swap, especially if the Commission determines that the swap is required to be cleared.

(b) *Swap submissions.* (1) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing. The derivatives clearing organization making the submission must be eligible under paragraph (a) of this section to accept for clearing the submitted swap, or group, category, type, or class of swaps.

(2) A derivatives clearing organization shall submit swaps to the Commission, to the extent reasonable and practicable to do so, by group, category, type, or class of swaps. The Commission may in its reasonable discretion consolidate multiple submissions from one derivatives clearing organization or subdivide a derivatives clearing organization's submission as appropriate for review.

(3) The submission shall be filed electronically with the Secretary of the Commission and shall include:

(i) A statement that the derivatives clearing organization is eligible to accept the swap, or group, category, type, or class of swaps for clearing and describes the extent to which, if the Commission were to determine that the swap, or group, category, type, or class of swaps is required to be cleared, the derivatives clearing organization will be able to maintain compliance with section 5b(c)(2) of the Act;

(ii) A statement that includes, but is not limited to, information that will assist the Commission in making a quantitative and qualitative assessment of the following factors:

(A) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data;

(B) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded;

(C) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract;

(D) The effect on competition, including appropriate fees and charges applied to clearing; and

(E) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or one or more of its

clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property;

(iii) Product specifications, including copies of any standardized legal documentation, generally accepted contract terms, standard practices for managing any life cycle events associated with the swap, and the extent to which the swap is electronically confirmable;

(iv) Participant eligibility standards, if different from the derivatives clearing organization's general participant eligibility standards;

(v) Pricing sources, models, and procedures, demonstrating an ability to obtain sufficient price data to measure credit exposures in a timely and accurate manner, including any agreements with clearing members to provide price data and copies of executed agreements with third-party price vendors, and information about any price reference index used, such as the name of the index, the source that calculates it, the methodology used to calculate the price reference index and how often it is calculated, and when and where it is published publicly;

(vi) Risk management procedures, including measurement and monitoring of credit exposures, initial and variation margin methodology, methodologies for stress testing and back testing, settlement procedures, and default management procedures;

(vii) Applicable rules, manuals, policies, or procedures;

(viii) A description of the manner in which the derivatives clearing organization has provided notice of the submission to its members and a summary of any views on the submission expressed by the members (a copy of the notice to members shall be included with the submission); and

(ix) Any additional information specifically requested by the Commission.

(4) The Commission must have received the submission by the open of business on the business day preceding the acceptance of the swap, or group, category, type, or class of swaps for clearing.

(5) The submission will be made available to the public and posted on the Commission Web site for a 30-day public comment period. A derivatives clearing organization that wishes to request confidential treatment for portions of its submission may do so in accordance with the procedures set out in § 145.9(d) of this chapter.

(6) The Commission will review the submission and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared. The Commission will make its determination not later than 90 days after a complete submission has been received, unless the submitting derivatives clearing organization agrees to an extension. The determination of when such submission is complete shall be at the sole discretion of the Commission. In making a determination that a clearing requirement shall apply, the Commission may impose such terms and conditions to the clearing requirement as the Commission determines to be appropriate.

(c) *Commission-initiated reviews.* (1) The Commission, on an ongoing basis, will review swaps that have not been accepted for clearing by a derivatives clearing organization to make a determination as to whether the swaps should be required to be cleared. In undertaking such reviews, the Commission will use information obtained pursuant to Commission regulations from swap data repositories, swap dealers, and major swap participants, and any other available information.

(2) Notice regarding any determination made under paragraph (c)(1) of this section will be made available to the public and posted on the Commission Web site for a 30-day public comment period.

(3) If no derivatives clearing organization has accepted for clearing a particular swap, group, category, type, or class of swaps that the Commission finds would otherwise be subject to a clearing requirement, the Commission will:

(i) Investigate the relevant facts and circumstances;

(ii) Within 30 days of the completion of its investigation, issue a public report containing the results of the investigation; and

(iii) Take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.

(d) *Stay of clearing requirement.* (1) After making a determination that a swap, or group, category, type, or class of swaps is required to be cleared, the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement until the Commission completes a review of the terms of the swap, or group, category, type, or class of swaps and the clearing arrangement.

(2) A counterparty to a swap that wishes to apply for a stay of the clearing requirement for that swap shall submit a written request to the Secretary of the Commission that includes:

(i) The identity and contact information of the counterparty to the swap;

(ii) The terms of the swap subject to the clearing requirement;

(iii) The name of the derivatives clearing organization clearing the swap;

(iv) A description of the clearing arrangement; and

(v) A statement explaining why the swap should not be subject to a clearing requirement.

(3) A derivatives clearing organization that has accepted for clearing a swap, or group, category, type, or class of swaps that is subject to a stay of the clearing requirement shall provide any information requested by the Commission in the course of its review.

(4) The Commission will complete its review not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type, or class of swaps agrees to an extension.

(5) Upon completion of its review, the Commission may:

(i) Determine, subject to any terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps must be cleared; or

(ii) Determine that the clearing requirement will not apply to the swap, or group, category, type, or class of swaps, but clearing may continue on a non-mandatory basis.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 3. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

■ 4. In § 140.94, revise paragraph (a)(5) and add new paragraph (a)(6) to read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.

(a) * * *

(5) All functions reserved to the Commission in § 5.14 of this chapter; and

(6) All functions reserved to the Commission in §§ 39.5(b)(2) and (d)(3) of this chapter.

* * * * *

Issued in Washington, DC, on July 19, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Process for Review of Swaps for Mandatory Clearing—Commission Voting Summary and Statements of Commissioners

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

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman Gary Gensler

I support the final rulemaking to establish a process for the review and designation of swaps for mandatory clearing. One of the primary goals of the Dodd-Frank Wall Street Reform and Consumer Protection Act was to lower risk by requiring standardized swaps to be centrally cleared. The final rule is consistent with the congressional requirement that derivatives clearing organizations be eligible to clear swaps and that the public has an opportunity for input before a swap is subject to mandatory clearing.

[FR Doc. 2011–18663 Filed 7–25–11; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 341

[Docket No. FDA–1995–N–0031 (Formerly Docket No. 1995N–0205)]

RIN 0910–AF32

Labeling for Bronchodilators To Treat Asthma; Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the final monograph (FM) for over-the-counter (OTC) bronchodilator drug products to add additional warnings (*e.g.,* an ''Asthma alert'') and to revise the indications, warnings, and directions in the labeling of products containing the ingredients ephedrine, ephedrine hydrochloride, ephedrine sulfate, epinephrine, epinephrine bitartrate, racephedrine hydrochloride, and racepinephrine hydrochloride. FDA is issuing this final rule after considering data and information submitted in response to the Agency's proposed labeling revisions for these products. This final rule is part of FDA's ongoing review of OTC drug products.

DATES: *Effective Date:* This regulation is effective January 23, 2012.

Compliance Date: The compliance date for all products, regardless of annual sales, is January 23, 2012.

FOR FURTHER INFORMATION CONTACT: Elaine Abraham, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5410, Silver Spring, MD 20993, 301–796–2090.

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I. Changes to the Labeling of OTC Drug Products Used To Treat Asthma

This rulemaking amends the FM for OTC bronchodilator drug products used to treat asthma. The ''Indications,'' ''Warnings'' and ''Directions'' portions of the Drug Facts label are being changed to help consumers better understand how to use these products and when it is appropriate to seek treatment from a doctor for their asthma. The ''Indications'' section now recommends use only for temporary relief of mild symptoms of intermittent asthma. Changes to both the ''Warnings'' and ''Directions'' sections emphasize that consumers should not exceed the recommended dose or duration of use with these drug products. The ''Warnings'' section is being changed to make it clearer that consumers whose symptoms worsen or do not improve should see a doctor. The ''Indications,'' ''Warnings'' and ''Directions'' portions of the Drug Facts label have also been revised to use language that is more readily understood by the average consumer.

II. History of the Development of the 1986 Final Monograph

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking (ANPR) under 21 CFR 330.10(a)(6) to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. The ANPR included the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel), the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The Panel recommended that ephedrine and epinephrine preparations be placed in Category I (generally recognized as safe and effective or GRASE) for OTC bronchodilator use (41 FR 38312 at 38370 through 38372).

FDA concurred with the Panel's recommendations and subsequently published the proposed rule in the **Federal Register** of October 26, 1982, (47 FR 47520) and the FM for OTC bronchodilator drug products in the **Federal Register** of October 2, 1986, (51 FR 35326). FDA included the following active ingredients in the FM:

- ''Ephedrine ingredients'' (*i.e.,* ephedrine, ephedrine hydrochloride, ephedrine sulfate, and racephedrine hydrochloride)
- ''Epinephrine ingredients'' (*i.e.,* epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride)

In subsequent rulemaking documents for this category, including this final rule, the term ''ephedrine ingredients'' refers to the four active ephedrine ingredients, the term ''epinephrine ingredients'' refers to the three active epinephrine ingredients, and the term ''OTC bronchodilator drug products''

refers to products containing any of these seven active ingredients.

III. Amendments to the 1986 Final Monograph Proposed by FDA

In the **Federal Register** of July 27, 1995, (60 FR 38643), FDA published a proposed rule to amend the FM to remove ephedrine ingredients and to classify them as not GRASE for OTC use. At that time, FDA had reassessed the risks and the benefits of OTC ephedrine drug products based on additional safety data and proposed their removal because of safety concerns. After reviewing the comments received in response to this proposed rule, FDA concluded that ephedrine ingredients should remain in the FM for self-treatment of mild bronchial asthma, and FDA withdrew its proposal to remove ephedrine ingredients from the OTC drug monograph in the **Federal Register** of July 13, 2005, (70 FR 40237).

Also, in the **Federal Register** of July 13, 2005, (70 FR 40237), FDA proposed to amend the FM for OTC bronchodilator drug products with revised labeling for products containing ephedrine and epinephrine ingredients. FDA proposed changes to the Indications, Warnings, and Directions sections of the labeling in 21 CFR 341.76. FDA stated that it considered the labeling revisions to be important for the safe and effective use of OTC bronchodilator drug products by providing better instructions to asthmatics about how to use the product correctly and to minimize risks. The proposed changes were:

1. *Indications:* Revise the indications in § 341.76(b)(1) and (b)(2) to a single indication using the OTC ''Drug Facts'' labeling format in § 201.66 (21 CFR 201.66). The labeling recommends use only for the ''temporary relief of occasional symptoms of mild asthma.''

2. *Warnings:* Revise the entire warnings section into ''Drug Facts'' labeling as follows:

- Add an ''Asthma alert'' section. This proposed section lists specific criteria consumers can use to identify when to seek treatment from a doctor for their asthma (*e.g.,* failure of the product to improve symptoms, need for excessive dosing). The ''Asthma alert'' should appear as the first statement under the heading ''Warnings'' and certain parts of the ''Asthma Alert'' should be in bold type. This new warning replaces the warning previously found in § 341.76(c)(5)(i) for ephedrine ingredients and in § 341.76(c)(6)(ii) for epinephrine ingredients.
- List a number of statements that follow the subheading ''Do not use.'' These statements include the warnings previously found in § 341.76(c)(1), (c)(4), and (c)(6)(iii), where applicable, for products intended for use in a hand-held rubber bulb nebulizer.
- List a number of conditions for which consumers should consult a doctor before using these products under the subheading ''Ask a doctor before use if you have.'' This list includes the conditions previously stated in § 341.76(c)(2), plus several additional conditions.
- Advise consumers to consult a doctor before using the OTC bronchodilator drug product with other specified drugs. This information appears under the subheading ''Ask a doctor or pharmacist before use if you are.'' The list of other specified drugs includes prescription drugs for asthma previously stated in § 341.76(c)(3) as well as a new list of other drugs that could cause side effects when used concurrently with ephedrine or epinephrine ingredients.
- List information that consumers need to know under the heading ''When using this product.'' This information includes the following:

a. Direct consumers' attention to information about the risks associated with increased blood pressure or heart rate by requiring that this information appear in bold type as the first bulleted statement.

b. Side effects that may occur (including side effects currently listed in § 341.76(c)(5)(ii)).

c. Information about risks associated with taking the drug more often than recommended or at higher-than-recommended doses. This information is currently in § 341.76(c)(6)(i) for products containing epinephrine ingredients. FDA proposed to include the information for all products containing either ephedrine or epinephrine ingredients.

d. New information about avoiding certain foods and dietary supplements while using an OTC bronchodilator drug product.

3. *Directions:* Revise the directions in § 341.76(d)(1) and (d)(2) to include the statement ''do not exceed dosage'' [in bold type] as the first bulleted statement under the heading ''Directions.''

IV. FDA's Response to Comments Received About the Proposed Labeling Changes

In response to the amendment to the FM proposed in the **Federal Register** of July 13, 2005, FDA received comments from two consumers, one manufacturer of OTC bronchodilator drug products, and three national associations. One consumer comment discussed dextromethorphan. This comment is not addressed further in this final rule because this ingredient is a cough suppressant rather than a bronchodilator.

(Comment 1) A comment submitted by an asthma patient supported the proposed rule and the continued availability of asthma drugs over the counter (Ref. 1). The comment stated that the proposed rule provides adequate warnings to address both the ''realistic dangers'' (*e.g.,* increased heart rate) and ''remote dangers'' (*e.g.,* seizure) to users. FDA agrees with the comment.

(Comment 2) One comment, from an association of respiratory therapists, stated that patients who suffer from asthma must have adequate instructions and education about drug administration (Ref. 2). The comment also stated that this information should be included with OTC or prescription medication to ensure that consumers receive the full benefits from their drugs and to prevent life-threatening conditions associated with improper use. The comment supported FDA's revisions to the warnings for OTC bronchodilator drug products to enhance labeling for existing products, but urged FDA to reconsider permitting bronchodilator products to remain OTC.

FDA does not plan to remove bronchodilator products from the OTC marketplace. FDA has found that the standards for safety, effectiveness, and labeling for OTC bronchodilator drug products have been met. Safety means a low incidence of adverse reactions or significant side effects under adequate directions for use and warnings against unsafe use as well as low potential for harm which may result from abuse under conditions of widespread availability (21 CFR 330.10(a)(4)(i)). Effectiveness means a reasonable expectation that, in a significant proportion of the target population, the pharmacological effect of the drug, when used under adequate directions for use and warnings against unsafe use, will provide clinically significant relief of the type claimed (21 CFR 330.10(a)(4)(ii)). OTC drug product labeling must be clear and truthful and must state the intended uses and results of the product; adequate directions for proper use; and warnings against unsafe use, side effects, and adverse reactions in such terms as to render them likely to be read and understood by the ordinary individual, including individuals of low comprehension, under customary conditions of purchase and use (21 CFR 330.10(a)(4)(v)). FDA has a reasonable expectation that these drugs provide a clinically meaningful

benefit in the treatment of mild symptoms of intermittent asthma when they are used according to labeled instructions for the temporary relief of wheezing, tightness of chest, and shortness of breath.

In this final rule, FDA has revised the indication to provide the consumer with a better understanding of the use of these drug products. In the July 13, 2005, proposed rule (70 FR 40237), FDA proposed changes to the ''Indications'' section of the labeling in § 341.76(b) (21 CFR 341.76(b)). The indication proposed in that proposed rule was for the ''temporary relief of occasional symptoms of mild asthma: wheezing, tightness of chest, shortness of breath'' (70 FR 40237 at 40248). This indication was based on the National Asthma Education and Prevention Program (NAEPP) Guidelines of 2002, which defined mild intermittent asthma as having symptoms no more than twice a week during the day or twice a month at night. FDA determined that people with mild intermittent asthma were the only category of asthmatics who should be candidates for OTC bronchodilators and stated that asthmatics with more severe asthma disease (*i.e.,* persistent asthma) should be under the care of a physician for consideration of additional therapy to control the disease (70 FR 40237 at 40240).

Newer NAEPP guidelines on the treatment of asthma published in 2007 (Ref. 3) state that ''mild asthma'' is a persistent form of asthma with symptoms occurring two or more times per week, but not daily. What was previously called ''mild intermittent asthma'' is now classified as ''intermittent asthma'' and is defined as having symptoms no more than twice a week during the day or twice a month at night. Between asthmatic episodes, these asthmatics have no symptoms and can maintain a normal level of activity. FDA is revising the indication for OTC bronchodilators to be consistent with this change in terminology for classifying asthma severity. The revised indication is as follows: ''For temporary relief of mild symptoms of intermittent asthma *e.g.,* wheezing, tightness of chest, and shortness of breath.'' This revised indication conveys the same important information to the consumer as proposed in 2005; that these products should be used on a temporary basis and only for mild symptoms of intermittent asthma, while including a better description of the type of asthma by current guidelines for which OTC products should be used.

(Comment 3) One comment agreed with FDA's proposed labeling changes with one exception (Ref. 4). The comment disagreed with the following warning, contending that the data did not support this statement:

> *When using this product* * * * increased blood pressure or heart rate can occur, which could lead to more serious problems such as heart attack, stroke, and death. Your risk can increase if you take more frequently or more than the recommended dose.

The comment stated that FDA's proposed warning fails to acknowledge that while the available data on ephedrine and epinephrine show that both may increase blood pressure or heart rate, the effect of the increase varies based on the individual's risk factors. Further, the magnitude of the warning is not supported by the literature or adverse event data, and this warning is unnecessarily alarming.

The comment further objected to FDA's warning because it implies that all consumers are at equal risk for complications resulting from increases in heart rate or blood pressure. The comment noted that sympathomimetic drugs (such as ephedrine) may cause modest increases in heart rate and blood pressure, but individual outcomes vary from person to person based on underlying risk factors. Because FDA described adverse event reports associated with taking ephedrine-containing bronchodilator drug products more frequently, or in higher amounts, than the labeled dose in the 2005 proposed rule (70 FR 40237 at 40243), the comment contended that no evidence was presented to link normal use of OTC bronchodilators with any of the events listed in the proposed warning. The comment recommended the following language as being more representative of the data:

> *When using this product* * * * increased blood pressure or heart rate may occur, which could increase your risk of more serious problems, especially if you have risk factors such as a history of high blood pressure or heart disease. Your risk may increase if you take more frequently or more than the recommended dose.

FDA does not agree. FDA stated in the proposed rule (70 FR 40237 at 40243) that based on reports it has received, the risk of adverse events from ephedrine can occur at any dosage and may increase when taking a higher dose or taking more frequent doses than at the recommended dose. In the July 27, 1995, proposed rule to exclude OTC ephedrine drug products from the FM for OTC bronchodilator drug products (60 FR 38643 at 38644), FDA discussed a number of reports of young people abusing OTC ephedrine drug products. In one case, 9 junior high school students took 3 to 8 ephedrine 25 milligram (mg) tablets and experienced rapid heart beats. One female who took 8 tablets had 200 heart beats per minute 2 hours after taking the tablets. In another case, a 22-year-old female took OTC ephedrine tablets (number not reported) and presented to a hospital emergency room with blood pressure of 170/110 millimeters mercury.

FDA also discussed three deaths that occurred. One report involved a 17-year-old male who died after ingesting a toxic or lethal amount of ephedrine. In another case, a 24-year-old male who died of an overdose had a blood level of ephedrine over 30 times the usual therapeutic range. In another case, a 52-year-old-male took 10 to 15 ephedrine tablets (believed to be 50 mg) over the previous 24 hours before he died.

Based on these cases, we disagree with the comment that the risk of adverse reactions is limited mostly to people with risk factors such as a history of high blood pressure or heart disease. As stated in the July 13, 2005, proposed rule (70 FR 40237 at 40243), the risk of adverse events from ephedrine can occur at any dosage, even in healthy individuals who did not take excessive amounts. However, we agree with the comment that those individuals with certain risk factors are at a greater risk. As discussed in the proposed rule, cardiovascular side effects from OTC bronchodilator drug products can include an increase in blood pressure and heart rate, which could lead to more serious problems such as heart attack, stroke, and death (70 FR 40237 at 40242 to 40243). The intent of this warning is to alert all potential users of these products that there are serious risks, even potential death, associated with the use of OTC bronchodilator drug products and that these risks may increase if they take the product more frequently or take more than the recommended dose. We are revising the warning to better convey risk information in clear language to people who have a history of high blood pressure or heart disease. See the language set out in § 341.76(c)(4) in this rule.

(Comment 4) One comment noted FDA's statement in the 2005 proposed rule that, based on differences in composition between OTC ephedrine drug products and dietary supplements containing botanical sources of ephedrine alkaloids, ''adverse event data for dietary supplements containing ephedrine alkaloids may not be completely applicable to ephedrine drug products'' (70 FR 40237 at 40241) (Ref. 4). Emphasizing that FDA's 2004 final rule declaring dietary supplements containing ephedrine alkaloids

adulterated (69 FR 6788) was specific to dietary supplements, the comment expressed concern that the labeling for OTC bronchodilator drug products was being revised based on data from botanically derived ephedrine alkaloids in dietary supplements, which are different from the ephedrine or epinephrine ingredients in OTC bronchodilator drugs. For example, the active ingredients in OTC bronchodilator drugs must meet United States Pharmacopeia standards of identity, strength, quality, and purity, but dietary supplements contain varying amounts and proportions of ephedrine and other ephedrine alkaloids (such as norephedrine, pseudoephedrine, and methylephedrine), depending on the plant species used (70 FR 40237 at 40241).

Although dietary supplements contain ephedrine alkaloids that are not present in OTC ephedrine drug products, ephedrine is the ingredient that was common to both dietary supplements and OTC drug products. As mentioned in the proposed rule, botanically-derived ephedrine alkaloids and the OTC bronchodilator drug product ingredients are related sympathomimetic chemicals that have similar pharmacologic actions. The adverse events associated with dietary supplements that used to contain ephedrine alkaloids may also occur in susceptible individuals taking an OTC bronchodilator drug product containing ephedrine covered by this monograph. FDA considers the known risks associated with dietary supplements that contained ephedrine alkaloids to be important for consideration as part of our analysis in the development of labeling warnings for bronchodilator drug products containing ephedrine, and thus includes those risks in its analysis.

(Comment 5) A comment objected to the inclusion of a warning about ''death'' in the labeling for OTC bronchodilator drug products (Ref. 4). It said that this warning should be reserved for the ''most exceptional circumstances'' and that the existing data did not support the warning. The comment noted that there is no reference to the word ''death'' in the current electronic *Physician's Desk Reference* labeling for OTC products, but cited 51 patient leaflets for prescription products that warn patients specifically about the possibility of death when taking a particular product.

FDA agrees that the term ''death'' in a warning should be used only when it is an accurate representation of existing data. As discussed in comment 3, we have reports of death resulting from taking too much ephedrine. We conclude that the warning is important for safe use of these OTC drug products to alert consumers to the potential consequences of inadequate treatment of asthma and the potential for serious adverse events, such as heart attack, stroke, and death, associated with these products.

(Comment 6) A comment questioned the meaning of the term ''temporary'' in the ''Indication'' statement in § 341.76(b)(1) of the 1995 OTC bronchodilator FM, ''for temporary relief of shortness of breath, tightness of chest, and wheezing due to bronchial asthma'' (Ref. 5). The comment asked what the time period associated with ''temporary'' was intended to be and whether these drugs provide temporary relief for all levels of asthma severity.

For bronchodilator drug products, ''temporary'' is defined by the dosing intervals that appear in the directions for use. The temporary effect of ephedrine is expected to be 4 hours and the temporary effect of epinephrine is expected to be 3 hours. If relief is not achieved after taking a dose of the product, consumers should seek the advice of a health professional. FDA notes that the term ''temporary'' is commonly used in OTC drug product labeling to imply short-term rather than permanent relief and to discourage consumers from prolonged use.

To better explain proper use of these products, FDA is revising the ''indication'' statement in this final rule as follows: ''for temporary relief of mild symptoms of intermittent asthma: [bullet] wheezing [bullet] tightness of chest [bullet] shortness of breath'' (see comment 2). People with more severe asthma should consult a physician and ask about other types of asthma relief products.

(Comment 7) One comment addressed the additional ''Indications'' in § 341.76(b)(1)(i) and (b)(ii) of the OTC bronchodilator FM, ''for the temporary relief of bronchial asthma'' and ''eases breathing for asthma patients by reducing spasms of bronchial muscles'' (Ref. 5). The comment stated that this language does not differentiate OTC bronchodilators from other bronchodilators that ''do the job better.'' It was the comment's view that patients may assume that the OTC drug product works the same as prescription products.

FDA's labeling for OTC bronchodilator drug products is intended to help consumers use products safely and effectively in the OTC setting. It is not intended to compare OTC bronchodilators to prescription products. Although OTC labeling is generally not intended to compare or differentiate among various available products, the revised ''Asthma alert'' warning for oral ephedrine does advise the consumer that bronchodilators that have a different route of administration may be advantageous, *i.e.,* inhaled products provide faster asthma relief than oral products (see Comment 10). The indications to which the comment objected in the FM were revised in the proposed rule to amend the FM (70 FR 40237 at 40242). FDA is finalizing the indication in § 341.76(b) to a single statement as follows: ''for temporary relief of mild symptoms of intermittent asthma: [bullet] wheezing [bullet] tightness of chest [bullet] shortness of breath.'' Therefore, the revised indication and ''Asthma alert'' should help consumers to better understand how to use these products.

(Comment 8) A comment addressed the ''Warning'' in § 341.76(c)(1) of the OTC bronchodilator FM, ''do not use this product unless a diagnosis of asthma has been made by a doctor'' (Ref. 5). The comment stated that this warning implies that a diagnosis makes the patient an expert at self-prescribing asthma treatments, but that such a diagnosis offers no information of value to the consumer when using an OTC bronchodilator drug product.

FDA maintains that there is a role for OTC bronchodilator drug products in the treatment of asthma. As conveyed in the labeling, these products are appropriate for consumers for whom a doctor has confirmed the diagnosis of intermittent asthma.

(Comment 9) A comment addressed the ''Warning'' in § 341.76(c)(3) of the OTC bronchodilator FM, ''Do not use this product if you have ever been hospitalized for asthma or if you are taking any prescription drug for asthma unless directed by a doctor'' (Ref. 5). The comment stated that a potential user does not know how hospitalization or prescription drug use will change the effectiveness of an OTC bronchodilator drug product.

FDA designed this warning to address safety concerns; a prior hospitalization or prescription drug use will not change the effectiveness of an OTC bronchodilator drug product. In addition, FDA revised the warnings from the 1995 FM for OTC bronchodilator drug products in the 2005 proposed rule (70 FR 40237 at 40248). The purpose of the warnings is to clearly convey to potential users of OTC bronchodilators that they should seek the advice of a doctor before using any bronchodilator products. The revised two part warning advises

consumers not to use the OTC bronchodilator drug product unless directed by a doctor. Asthmatics who have previously needed hospital care, or are taking a prescription drug to treat asthma, need to consult a doctor before using an OTC bronchodilator.

The warnings in this final rule have been broadened and revised. See the language set out in § 341.76(c)(2) and § 341.76(c)(3) in this rule.

(Comment 10) The same comment also addressed the ''Warning'' in § 341.76(c)(5)(i) of the OTC bronchodilator FM for ephedrine products, ''do not continue to use this product, but seek medical assistance immediately if symptoms are not relieved within 1 hour or become worse'' (Ref. 5). The comment stated that if consumers' symptoms do not improve or become worse at any time during treatment, the labeling should advise them to seek immediate medical attention.

FDA agrees and is providing broader labeling information on this issue in the revised ''Asthma alert.'' The new information is intended to help asthmatics understand whether the drug is not working as intended or whether a consumer's condition may be worsening.

The 60-minute timeframe after which a consumer should seek medical attention is specific to ephedrine oral drug products and reflects the time that is needed for the drug to be absorbed from the gastrointestinal tract and to reach therapeutic blood levels. The time is modified to 20 minutes for inhaled drug products.

FDA's new ''Asthma alert'' for ephedrine-containing products is set out in § 341.76(c)(5) in this rule.

FDA has modified the ''Asthma alert'' warning from the warning proposed in the 2005 proposed rule. For ephedrine containing products, the statement, ''this product will not give you asthma relief as quickly as an inhaled bronchodilator'' has been added as the final bulleted statement. Although there are many factors involved, inhaled drugs in general show a faster onset of action than oral drugs (Ref. 6). As discussed previously, oral ephedrine can take 60 minutes to reach therapeutic levels. This statement has been added to the warning to inform the consumer that there are other options for asthma treatment available that can be used in place of oral ephedrine if oral ephedrine does not provide rapid enough symptom relief.

In the ''Asthma alert'' section, two bulleted statements were revised that follow the statement, ''because asthma may be life threatening, see a doctor if you.'' For ephedrine, the statement ''[Bullet] need [insert total number of dosage units that equals 150 milligrams] in any day'' was changed to ''[Bullet] need more than [insert total number of dosage units that equals 150 milligrams] in 24 hours.'' Since 150 mg is the maximum dose of ephedrine that should be used in 24 hours (*i.e.,* one day, see directions), consumers who need more to relieve their symptoms should see a doctor. The terminology ''one day'' may not be clear to consumers as to the exact time frame, so this has been changed to ''24 hours'' to specify the time frame. Also, the statement ''[Bullet] use more than [insert total number of dosage units that equals 100 milligrams] a day for more than 3 days a week'' has been changed to ''[Bullet] use more than [insert total number of dosage units that equals 100 milligrams] in 24 hours for 3 or more days a week.'' The ''day'' time frame is changed to ''24 hours'' and ''for more than 3 days a week'' is changed to ''for 3 or more days a week.'' These changes are made for clarity and do not alter the proposed content of the alert.

Similar changes were made to the ''Asthma alert'' for epinephrine-containing products which is revised to read as set out in § 341.76(c)(6) in this rule.

The ''Asthma alert'' is the type of warning identified in 21 CFR 201.66(c)(5)(ii) [the Drug Facts rule] that has an appropriate subheading that is highlighted in bold type. FDA is amending § 201.66(c)(5)(ii)(B) to cross-reference this new warning.

(Comment 11) One comment addressed the ''Warning'' in § 341.76(c)(6)(ii) of the OTC bronchodilator FM for epinephrine products, ''do not continue to use this product, but seek medical assistance immediately if symptoms are not relieved within 20 minutes or become worse'' (Ref. 5). The comment noted that while inhaled epinephrine works quickly, the duration of symptom relief is very short. The comment stated that patients are told not to use the drug more frequently than instructed, but not given a reason to comply with the instruction. The comment stated that labeling should explain that an increasing need for medication is a sign of airway swelling that must be treated by a physician. The labeling should tell users that the bronchodilator effect wears off before the next dose may be taken safely and to seek immediate treatment if symptoms are not completely relieved or if they worsen. The labeling should also warn against using inhaled epinephrine in place of, or in addition to, prescription bronchodilators.

In this rule, FDA is requiring new labeling that addresses the concerns expressed in the comment. Consumers are told not to use the drug more frequently than instructed because of an increased risk of serious adverse events. Specifically, the new required labeling will read as set out in § 341.76(c)(4) in this rule.

The labeling also warns to ask a doctor or pharmacist before using any OTC bronchodilator if taking prescription drugs for asthma. In addition, FDA's new labeling addresses the comment's concern that an increasing need for medication is a sign of airway swelling that must be treated by a physician. As discussed in comment 10, FDA's new ''Asthma alert'' for epinephrine-containing products will read as set out in § 341.76(c)(6) in this rule.

FDA believes that the revised Asthma alert as well as the revised warning on the potential for serious adverse events if bronchodilators are not used according to labeled instructions respond to the comment's concern regarding adequate warnings for epinephrine.

V. Additional Consumer-Friendly Changes FDA Made to the Labeling

To make the bronchodilator labeling more consumer friendly and to reach a range of consumers' literacy skills, FDA has made changes to the labeling that do not affect content but make the labeling more understandable to people of all literacy levels. FDA is making these changes so as not to affect the content of the labeling as proposed in the 2005 proposed rule, but to make the labeling clear to ordinary individuals including individuals of low comprehension as stated in § 330.10(a)(4)(v). These changes are as follows:

- As described in comment 10, two bulleted statements in the ''Asthma alert'' section were revised. These follow the statement, ''Because asthma may be life threatening, see a doctor if you.'' For ephedrine, the statement ''[Bullet] need [insert total number of dosage units that equals 150 milligrams] in any day'' was changed to ''[Bullet] need more than [insert total number of dosage units that equals 150 milligrams] in 24 hours'' to clarify the timeframe indicated by a ''day.'' Also, the statement ''[Bullet] use more than [insert total number of dosage units that equals 100 milligrams] a day for more than 3 days a week'' has been changed to ''[Bullet] use more than [insert total number of dosage units that equals 100 milligrams] in 24 hours for 3 or more days a week.'' A similar change was

made to the epinephrine ''Asthma alert.''

• As discussed in comment 3, warnings about increased blood pressure or heart rate have been revised.

• The phrase, ''avoid caffeine-containing foods and beverages'' under the heading ''When using this product'' has been changed to ''avoid foods or beverages that contain caffeine.''

FDA has added a ''Stop use and ask a doctor if'' section by moving warning statements proposed in 2005 under, ''when using this product'' to this new section. The section will read as set out in § 341.76(c)(7) in this rule.

The statement ''your asthma is getting worse (see Asthma alert)'' is taken from the ''Asthma alert'' warning and has been moved to this new section to clarify what the consumer should do if the product is not providing the necessary relief for them. The other three bulleted statements were previously in the labeling section under the heading ''When using this product.'' Moving these statements under this heading does not affect content and may clarify for consumers how they should handle any of these side effects by emphasizing that they should see a doctor.

• Under ''Directions'' for ephedrine and epinephrine, the first bulleted statement, ''do not exceed dosage'' has been changed to ''do not take more than directed'' or ''do not use more than directed,'' respectively.

• The second bulleted statement under ''Directions'' for ephedrine contains the phrase, ''not to exceed 150 mg in 24 hours'' and has been revised to the sentence, ''do not take more than 150 mg in 24 hours.'' The bulleted statement now reads as follows: ''[Bullet] adults and children 12 years of age and over: oral dose is 12.5 to 25 milligrams every 4 hours as needed. Do not take more than 150 milligrams in 24 hours.''

• The second bulleted statement under Directions for epinephrine states the dose as 1 to 3 inhalations not more often than every 3 hours. This has been revised by adding, ''do not use more than 12 inhalations in 24 hours'' to be consistent with information provided in the ''Asthma alert.'' The bulleted statement now reads as follows: ''[Bullet] adults and children 4 years of age and over: 1 to 3 inhalations not more often than every 3 hours. Do not use more than 12 inhalations in 24 hours. The use of this product by children should be supervised by an adult.''

VI. FDA's Final Conclusions on Warnings and Other Labeling Information for OTC Bronchodilator Drug Products

A. Implementation Date for New Labeling

FDA has determined in order to provide for safe and effective use of OTC bronchodilator drug products at the earliest possible time because of the safety issues involved with the use of these products that this final rule be implemented within 180 days after its publication. Therefore, on or after 180 days after the date of publication of this final rule in the **Federal Register**, any OTC bronchodilator drug product that is subject to the final rule and that contains nonmonograph labeling or packaging may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Any OTC bronchodilator drug product that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule, and is not in compliance with the regulations, is subject to regulatory action. Further, any OTC drug product that was previously initially introduced or initially delivered for introduction into interstate commerce may not be repackaged or relabeled with the prior monograph labeling for these products after the effective date of this final rule. Manufacturers are encouraged to comply voluntarily as soon as possible.

B. Statement About Warnings

Mandating warnings in an OTC drug monograph does not require a finding that any or all of the OTC drug products covered by the regulation actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings repudiate the prior OTC drug monographs and regulations under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that warnings are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the Federal Food, Drug, and Cosmetic Act. This judgment balances the benefits of these drug products against their potential risks (see 21 CFR 330.10(a)).

FDA's decision to act in this instance need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.,* 252 F.3d 986, 991 (8th Cir. 2001)). To mandate warnings, or take similar regulatory action, FDA need not show, nor do we allege, actual causation. For an expanded discussion of case law supporting FDA's authority to require such warnings, see the December 6, 2002, (67 FR 72555), final rule entitled ''Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use.''

VII. Analysis of Impacts

A. Introduction and Summary

1. Introduction

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 as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the requirements are likely to impose a burden on a substantial number of affected small entities, the Agency projects that the final rule will have a significant economic impact on a substantial number of small entities and has conducted an Initial Regulatory Flexibility Analysis as required under the Regulatory Flexibility Act.

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.

2. Summary

The purpose of this final rule is to revise the labeling of the ''Indications,'' ''Warnings,'' and ''Directions'' sections for over-the-counter (OTC) single-ingredient ephedrine and epinephrine bronchodilators. The required revised labeling would indicate the condition (mild symptoms of intermittent asthma) for which the product is intended and would warn consumers about when to seek medical assistance. The final rule would also use language that is more readily understood by the average consumer. The revised labeling may lead consumers to seek medical care and to improved asthma management. Thus, the estimated benefits of the final rule may come from reduced medical costs associated with adverse events arising from the misuse or abuse of the product. The estimated annual benefits range from $14.0 million to $69.3 million. One-time labeling costs from personnel, reallocation time, materials, and inventory disposal range from $0.7 million to $4.1 million. In addition, costs may arise from increased physician and medication expenses paid by consumers who may switch to managed care. The estimated annual costs from additional medical care range from $1.3 million to $2.5 million. Annualized over 20 years, the estimated total costs range from $1.3 million to $2.8 million with a 3-percent discount rate, and from $1.3 million to $2.9 million with a 7-percent discount rate. Annualized over 20 years, the estimated net benefits (estimated benefits minus estimated costs) from the regulation range from $11.2 million to $68.0 million with a 3-percent discount rate and from $11.1 million to $68.0 million with a 7-percent discount rate.

B. Need for Regulation

The Centers for Disease Control and Prevention (CDC) reported that in 2009, 7.7 percent (or 17.5 million) of non-institutionalized adults and 9.6 percent (7.1 million) of children suffer from asthma in the United States. Within population subgroups, asthma prevalence is higher among females, children of non-Hispanic Black and Puerto Rican race or ethnicity, and persons with family income below the poverty level (Ref. 7). In 2006, asthma was listed as one of the top five most costly conditions in the United States (Ref. 8). Asthma leads to direct health care costs and indirect costs such as mortality and lost productivity that pose a high burden on society. For example, in 2007, there were 1.75 million asthma-related emergency department visits and 456,000 asthma hospitalizations (Ref. 7), and in 2009, there were 3,447 persons who died of asthma (Ref. 9).

A study found that 5 to 10 percent of individuals with asthma use nonprescription bronchodilators as monotherapy for the treatment of asthma (Ref. 10). Current references for managing asthma acknowledge that once asthma has been professionally diagnosed, patients with mild cases of asthma may use OTC bronchodilators and patients who have more frequent or serious symptoms should be referred to a prescription long-term controller. While the Handbook of Nonprescription Drugs lists epinephrine and ephedrine as the nonprescription bronchodilators available for the treatment of asthma (Ref. 11), the National Heart, Lung and Blood Institute's guidelines for the diagnosis and management of asthma does not recommend epinephrine or ephedrine as a medication of choice for quick-relief of asthma (Ref. 3). (See discussion under IV. FDA's Response to Comments Received About the Proposed Labeling Changes, Comment 2.)

There have been concerns that self-diagnosis and self-treatment of asthma along with illicit use or misuse of OTC single-ingredient ephedrine and epinephrine bronchodilators can lead to serious clinical consequences, which may include death. Studies indicate that approximately 20 percent of individuals using OTC epinephrine inhalers have mild-to-moderate persistent asthma, and should not be using OTC products but be under the supervision of a physician (Ref. 12). The American Association of Poison Control Centers National Poison Data System (NPDS), which collects data on adverse event exposure and information calls associated with pharmaceutical products, reported 1,035 cases associated with exposure to non-selective beta agonists in 2008 (Ref. 13). Although in most of these cases the reason for exposure was reported to be unintentional, 350 of these cases had to be treated in a health facility. Furthermore, other studies report abuse of epinephrine inhalers among high school students (Ref. 14) and fatal cases of asthma in which individuals were using OTC epinephrine (Ref. 15).

The use of OTC bronchodilators appears to be associated with certain demographic characteristics such as low income or educational attainment. For example, a study that drew participants from Northern California found that 60 percent of subjects who had used only OTC bronchodilator to treat asthma did not have any health insurance or a primary caregiver for the management of asthma (Ref. 16). Furthermore, another study reports that overuse of inhaled beta-agonists is associated with lower educational level (Ref. 17).

Executive Order 12866 directs agencies to assess the need for any regulatory action and to provide an explanation of how the regulation will meet that need. FDA is responsible for protecting the public health and for helping the public get the accurate, science-based information they need to use medicines to maintain and improve their health. FDA concludes that current labeling of single ingredient ephedrine and epinephrine products available over-the-counter provide inadequate information. The revised labeling would provide consumers access to information that may enable them to better assess the risk of taking OTC bronchodilators and to possibly improve the management of asthma.

C. Benefits

The estimated benefits of the final rule would derive from a reduction in the number of adverse events, namely hospitalizations, emergency department (ED) visits, physician visits, and mortality, associated with self-medication or mismanagement of asthma medication that may be prevented with revised information or with the help of professional guidance.

FDA estimates the number of preventable events based on the range of individuals with asthma that use OTC bronchodilators as monotherapy, which is between 5 percent (Low) and 10 percent (High) (Ref. 10). Table 1 of this document presents the number of preventable events by category. The analysis assumes that the percent of ambulatory or ED visits related to medication adverse effects approximates the percent of events that may be preventable due to mismanagement or misuse of the medication, and that adults and children face the same incidence rates or likelihood of experiencing each of these events. (See Appendix A for a description on how these are estimated.)

TABLE 1—ESTIMATED PREVENTABLE EVENTS

Description [a]	Length of visit	Number of events	
		Low	High
Ambulatory Visits	0.8 hr	282	564
Emergency Department (ED) Visits	3.0 hrs	67	134
Hospital Stays:			
Inpatient	3.4 days	4	7
Emergency Department (ED).[b]	4.0 days	13	27
Statistical Lives Saved		2	9

Notes: [a] See Appendix A for calculations.
[b] ED hospital length of stay includes 4.93 hours of estimated ED wait time. Sources: Refs. 10–12, 15, 18–25.

Using information of the average length of hospital stays (3.4 days, Ref. 18), ED wait time (3.0 hours and 4.93 hours for ED visits that result in discharge and hospital admissions, respectively, Ref. 19) and time spent in a physician's visit (0.8 hour, Ref. 20), the benefits from the estimated preventable events are valued using median or average costs on physician visits ($155/visit, Ref. 26), ED visits ($569/visit, Ref. 27) and hospital stays ($1,400/day, Ref. 28). We also include part of the indirect benefits: namely, averted loss of work time, using the 2009 median hourly wage of $15.95 plus benefits (equal to $20.73) as reported by the Bureau of Labor Statistics (Ref. 29). Estimates for the loss of work time are determined assuming 8-hour work days, *i.e.,* 3 days in the hospital would be considered 24 hours of lost work. FDA notes that an appropriate method to value the indirect costs of illness would be either a revealed or stated preference measure of willingness to pay. Because we do not have such a measure for these events, we used the value of lost work-time, which likely leads to a lower bound of the estimate of the indirect benefits. Estimated statistical lives saved are valued using Environmental Protection Agency (EPA)'s value of a statistical life (VSL) adjusted for inflation, $7.9 million/life (Ref. 30). The total estimated benefits range from $13.98 million to $69.33 million (see table 2 of this document).

TABLE 2—ESTIMATED PREVENTED EVENTS AND ASSOCIATED ESTIMATED BENEFITS

Description	Time	Cost	Number of events		Estimated benefit [a]	
			Low	High	Low ($000)	High ($000)
Ambulatory Visits		$155/visit	282	564	43.71	87.43
Emergency Department (ED) Visits.		$569/visit	67	134	38.04	76.09
Hospital Stays:						
Inpatient	3.4 days	$1,400/day	4	7	21.04	42.08
ED	4.0 days	$1,400/day	13	27	75.19	150.38
Loss of Work Time:						
Ambulatory Visits	0.8 hr	$20.73/hr[b]	282	564	4.58	9.16
ED Visits	3.0 hrs	$20.73/hr[b]	67	134	3.19	6.38
Hospital Stays:						
Inpatient	27.2 hrs[c]	$20.73/hr[b]	4	7	2.11	4.22
ED	32.1 hrs[c]	$20.73/hr[b]	13	27	8.91	17.82
Statistical Lives Saved		$7.9 Mil/life	2	9	$13,788	$68,941
Total Estimated Benefits					$13,985	$69,334

Notes: [a] Statistical Lives Saved are valued in millions of dollars.
[b] Median hourly wage of $15.95 plus benefits.
[c] Time estimates for loss of work related to hospital stays assume 8-hour work days.

D. Costs

The estimated costs come from labeling costs and additional costs borne by those consumers who switch to prescription medication or other OTC products within the same therapeutic class.

1. Relabeling Costs

Based on Universal Product Code (UPC) counts of the number of OTC products listed in the Red Book and where ephedrine or epinephrine is the single-active ingredient, the number of OTC bronchodilators has decreased from 19 UPCs in 2000 to 13 in 2010. While inhalers are the most prevalent form, OTC bronchodilators are also available in capsules and tablets. FDA estimates that approximately seven manufacturers and distributors market five different brands that are sold in 13 product-form variations or UPCs (see table 3 of this document).

TABLE 3—ESTIMATED NUMBER OF OVER-THE-COUNTER SINGLE-INGREDIENT EPHEDRINE AND EPINEPHRINE BRANDS AND MANUFACTURERS

	2000	2004	2010
No. of Brands [a]	5	5	5
Form: Aerosol	3	3	3
Form: Capsule	1	1	1
Form: Tablet	1	1	1
No. of UPCs	19	15	13
Form: Aerosol	11	8	7
Form: Capsule	5	4	4
Form: Tablet	3	3	2
No. of Manufacturers and Distributors [a]	8	6	7

Note: [a] A brand, manufacturer or distributor is counted only once.
Source: Calculations based on the Red Book, Refs. 31–33.

FDA estimates the costs of the required labeling change using a model developed by a contractor, RTI International (RTI). The labeling cost model was based on an earlier model developed by RTI for FDA to estimate the cost of food label changes (Ref. 34). The required change would revise the ''Indications,'' ''Warnings'' and ''Directions'' sections of the Drug Fact label, and would be deemed minor. (See discussion under IV. FDA's Response to Comments Received About the Proposed Labeling Changes.) The required compliance period is 6 months and it would affect 100 percent of the OTC single ingredient ephedrine and epinephrine UPCs.

RTI's labeling cost estimates are based on the 6-digit North American Industry Classification System (NAICS) that corresponds to Pharmaceutical Preparation Manufacturing of Bronchial Remedies (NAICS code 325412). Labeling costs include labor, material, inventory and recordkeeping. Since FDA provides the design of the label, the labeling cost model assumes there are no costs associated with analytical tests, market tests or label design. The estimated one-time relabeling cost ranges from $0.75 million to $4.1 million (see table 4 of this document).

TABLE 4—ESTIMATED LABELING COST

Cost factor	Low ($000)	Midpoint ($000)	High ($000)
Labor	206	729	1,354
Materials	45	112	230
Inventory	486	1,015	2,481
Recordkeeping	9	18	22
Total Labeling Cost	746	1,873	4,087

2. Switching Costs

Since the revised labeling requirement advises consumers that moderate and severe cases of asthma and all cases of persistent asthma should be under the supervision of a physician and that inhalers provide faster relief, this may have two possible effects on users of OTC ephedrine products with mild-to-severe asthma. Some individuals may respond to this new advice and seek medical help that gets them under a managed care plan. While some of these individuals may seek a physician and switch to prescription medicine as a result, others may substitute other OTC products within the same therapeutic class. FDA does not estimate the number of switchers within the same class and assumes that all switchers will seek a physician and switch to prescription medicine. This estimate may be considered an upper bound of the costs as nonprescription medicine is, on average, lower than prescription medicine.

FDA uses 13 percent as the proxy for the proportion of patients with asthma that may respond to the labeling change and switch to prescription medicine, which is based on a study that reported that 13 to 22 percent of prescription drug spending is attributable to purchases made by consumers who asked for the advertised drug after exposure to television or radio advertisements (Ref. 35). The implied assumption is that consumers who read the labeling would respond to the new ''Indications,'' ''Warnings'' and ''Directions'' sections by then visiting a physician to be placed under a managed care plan or by switching to a new OTC medication as if they were responding to advertisements. The estimated number of switchers is 446 to 892. The range of switchers is estimated by taking the population at risk (245,870 and 491,740 for Low and High, respectively) and weighting it by the percent of the physician visits from patients with asthma (1.4 percent) and the percent of the physician visits due to advertising (13 percent).

The additional annual estimated costs of switching to prescription care is calculated using the difference in total medical expenditures of current asthma users without preventive prescription care ($4,721, Ref. 36) and with preventive prescription care ($7,586, Ref. 36), and the estimated number of switchers. The total estimated cost of switching is calculated by multiplying the additional estimated cost from switching to preventive prescription care ($2,865) times the estimated number of individuals switching to preventive care. The total estimated cost from switching ranges from $1,278,000 to $2,555,000.

3. Estimated Total Costs

The estimated total costs include one-time labeling costs plus annual switching costs. Annualized over 20

years, total estimated costs range from $1.3 million to $2.8 million with a 3-percent discount rate and from $1.3 million to $2.9 million with a 7-percent discount rate (see table 5 of this document).

TABLE 5—TOTAL ESTIMATED COST

Description	Low ($000)	High ($000)
Annual Cost:		
Switching Cost	1,278.00	2,555.00
One-Time Cost:		
Labeling Cost	745.57	4,086.83
Annualized Cost		
3 Percent ...	1,326.65	2,821.70
7 Percent ...	1,343.77	2,915.53

E. Summary of Costs and Benefits

The net benefits are determined based on the various combinations (Low and High) of costs and benefits and annualizing over 20 years assuming a 3 and 7 percent discount rate, separately. Annualized over 20 years, the minimum and maximum estimated net benefits range from $11.2 million to $68.0 million with a 3 percent discount rate, and from $11.1 million to $68.0 million with a 7 percent discount rate (see table 6 of this document).

TABLE 6—ESTIMATED ANNUALIZED NET BENEFITS

Benefits	Cost		Net benefits	
	Low	High	Low	High
	Annualized at 3% over 20 years			
$13,985	$1,327	$2,822	$12,658	$11,163
69,334	1,327	2,822	68,008	58,171
	Annualized at 7% over 20 years			
13,985	1,344	2,916	12,641	11,069
69,334	1,344	2,916	67,991	58,265

Notes: Estimates are in $000s. Net Benefits are benefits minus costs.

Current asthma prevalence rates (percents of the population affected shown in parentheses) between population subgroups show that females (9.3) have higher current asthma prevalence than males (7.0), and that children (9.6) have higher asthma prevalence than adults (7.7). Compared with white persons (7.8), the prevalence is higher among black (11.1) and lower among Asians (5.3). Moreover, those with family income below the Federal poverty level have higher asthma prevalence (11.6) than those with incomes in the near poor (8.5), and not poor (7.3) categories (Ref. 7). While the estimated benefits are calculated based on average characteristics of an asthma individual, it is likely that those sub-groups, *e.g.,* children and the poor, with high prevalence rates may benefit the most from the regulation.

Several factors such as growing asthma prevalence and educational programs geared to improving asthma management and care may impact the market for OTC epinephrine and ephedrine bronchodilators. Current asthma treatment and management guidelines (Ref. 3) do not recommend OTC ephedrine and epinephrine as the standard of care and this may impact the demand for epinephrine and ephedrine bronchodilators and their substitutes, *e.g.,* other OTC bronchodilators or prescription medication within the same therapeutic class. Moreover, the expected withdrawal of chlorofluorocarbon (CFC) inhalers may affect the sale of OTC epinephrine and ephedrine bronchodilators. FDA is uncertain on the impact of these effects on the overall market for OTC bronchodilators in the coming years, but at best, the benefits from preventable adverse events or improved asthma management due to the revised labeling may offset the additional cost of switching to prescription medication and managed care.

F. Analysis of Regulatory Alternatives to the Final Rule

The final rule seeks to change the labeling to make it more understandable to the average reader and to warn users when to seek medical assistance. Changes would also include information that alternative medication may provide faster relief. The final rule establishes an implementation period of 180 days from publication.

The following alternatives were identified: (1) Extend the compliance period, and (2) require more labeling. The compliance periods were 12 and 18 months. Another alternative would be to require additional labeling changes that would be considered ''Major.'' This type of labeling change would involve multiple color changes that would require a label redesign such as substantial changes or elimination of a claim, caution statement or disclaimer. Table 7 of this document presents the relabeling costs associated with these alternatives. Extending the implementation period would lower the costs under both minor and major labeling changes. Extending the period, however, would also postpone the period in which benefits may be observed.

TABLE 7—ESTIMATED LABELING COSTS UNDER ALTERNATIVES TO FINAL RULE

Compliance period (months)	Labeling change					
	Minor			Major		
	Low ($000)	Midpoint ($000)	High ($000)	Low ($000)	Midpoint ($000)	High ($000)
6	746	1,873	4,087	1,200	2,813	5,851
12	429	1,063	1,840	870	1,974	3,550
18	244	656	1,164	540	1,267	2,308

G. Regulatory Flexibility Analysis

FDA has examined the economic implications of the final rule as required by the Regulatory Flexibility Act. If a rule will have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. This analysis serves as the Initial Regulatory Flexibility Analysis as required under the Regulatory Flexibility Act.

1. Description and Number of Affected Small Entities

The Small Business Administration (SBA) uses different definitions of what a small entity is for different industries. Using 2009 SBA size standard definitions, a firm categorized in NAICS code 315412 (Pharmaceutical Preparations) is considered small if it employs fewer than 750 persons (Ref. 37). Using the most currently available data on the number of establishments by employee size from the 2007 Economic Census (Ref. 38) shows that the majority of the establishments have employee sizes by which they would be considered small (see table 7). Using data at the establishment level implicitly assumes that the typical manufacturing establishment is roughly equivalent to the typical small manufacturing firm.

2. Economic Effect on Small Entities

FDA uses data on the total value of shipments by employment size from the 2007 Economic Census (Ref. 38) to determine the unit labeling cost as a percent of the total value of shipments for a typical manufacturer. The average value of shipments is presented for all establishments in NAICS code 325412 and for establishments employing 1–10, 11–499 and over 500 employees, separately. The average value of shipments for entities that employ up to 10 workers is $1,433,000 while for entities with more than 500 employees it is over $1,160 million. It is estimated that the average one-time labeling cost per UPC as a percent of average value of shipments for small entities may be between 0 and 22 percent (see table 8 of this document). The Agency tentatively concludes that this rule would have a significant impact on a substantial number of small entities, but the impact is uncertain.

TABLE 8—ESTIMATED IMPACT OF THE FINAL RULE ON SMALL BUSINESS ENTITIES

Establishments (NAICS 325412)			Value of shipments ($000)		Percent cost per UPC of average value of shipment		
Employees	Count	Percent	Total	Average	Low	Midpoint	High
0–10	408	41	$584,656	1,433	4.00	10.05	21.94
11–499	508	51	55,256,380	108,772	0.05	0.13	0.29
500+	75	8	87,035,221	1,160,470	0.00	0.01	0.03

Source: Pharmaceutical Preparations (NAICS 325412), 2007 Economic Census (Ref. 38).

3. Additional Flexibility Considered

In this section, we discuss alternatives that would present reductions in costs which would be channeled through small entities.

a. *Alternative 1: Exempt small-sized manufacturers from labeling requirement.* Exempting small-sized manufacturers from the labeling requirement would result in a one-time saving of 10 to 22 percent of the value of shipments (see table 8 of this document). However, assuming that the majority of the consumers purchase from small-size firms, it is uncertain that the estimated public health benefits discussed above would be observed.

b. *Alternative 2: Expand the compliance period for small businesses.* FDA considers expanding the compliance period to 12 and 18 months for manufacturers employing up to 10 workers. Table 9 of this document shows that the longer the compliance period, the lower the costs, and that costs may be reduced to 1 and 6 percent under the 18-month compliance period. The longer the compliance period, however, the longer it may take to observe benefits.

TABLE 9—PERCENT COST OF AVERAGE VALUE OF SHIPMENT FOR SMALL ENTITIES

Compliance period (months)	Number of employees	Average Value of shipments ($000)	Percent cost of average value of shipment		
			Low	Midpoint	High
6	0–10	$1,433	4.0	10.1	21.9
12	0–10	1,433	2.3	5.7	9.9
18	0–10	1,433	1.3	3.5	6.2

VIII. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

IX. Environmental Impact

FDA has determined under 21 CFR 25.31(a) 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.

X. 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.'' The sole statutory provision giving preemptive effect to the final rule is section 751 of the act (21 U.S.C. 379r). We believe that we have complied with all of the applicable requirements under the Executive order and have determined that the preemptive effects of this rule are consistent with Executive Order 13132.

XI. References

The following references are on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, under Docket No. FDA–1995–N–0031 (formerly Docket No. 1995N–0205), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

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List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 201 and 341 are amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Section 201.66 is amended by revising paragraph (c)(5)(ii)(B) to read as follows:

§ 201.66 Format and content requirements for over-the-counter (OTC) drug product labeling.

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(B) Allergic reaction and asthma alert warnings. Allergic reaction warnings set forth in any applicable OTC drug monograph or approved drug application for any product that requires a separate allergy warning. This warning shall follow the subheading ''Allergy alert:'' The asthma alert warning set forth in §§ 341.76(c)(5) and 341.76(c)(6) of this chapter. This warning shall follow the subheading ''Asthma alert:''

* * * * *

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

■ 3. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 4. Section 341.76 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 341.76 Labeling of bronchodilator drug products.

(b) *Indication.* The labeling of the product states the following under the heading ''Use'': ''for temporary relief of mild symptoms of intermittent asthma: [bullet] [1] wheezing [bullet] tightness of chest [bullet] shortness of breath''. Other truthful and nonmisleading statements, describing only the indication for use that has been established and listed in this paragraph (b) may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act relating to misbranding and the prohibition in section 301(d) of the Federal Food, Drug, and Cosmetic Act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the Federal Food, Drug, and Cosmetic Act.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading ''Warnings'':

(1) The following statements shall appear after the subheading ''Do not use'' [in bold type]:

(i) ''[Bullet] unless a doctor said you have asthma''.

(ii) ''[Bullet] if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs taken for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you do not know if your prescription drug contains an MAOI, ask a doctor or pharmacist before taking this product.''

(2) The following information shall appear after the subheading ''Ask a doctor before use if you have'' [in bold type]: ''[bullet] ever been hospitalized for asthma [bullet] heart disease [bullet] high blood pressure [bullet] diabetes [bullet] thyroid disease [bullet] seizures [bullet] narrow angle glaucoma [bullet] a psychiatric or emotional condition [bullet] trouble urinating due to an enlarged prostate gland''.

(3) The following information shall appear after the subheading ''Ask a doctor or pharmacist before use if you are'' [in bold type]:

(i) ''[Bullet] taking prescription drugs for asthma, obesity, weight control, depression, or psychiatric or emotional conditions''.

(ii) ''[Bullet] taking any drug that contains phenylephrine, pseudoephedrine, ephedrine, or caffeine (such as for allergy, cough-cold, or pain)''.

(4) The following information shall appear after the subheading ''When using this product'' [in bold type]:

(i) ''[Bullet] your blood pressure or heart rate may go up. This could increase your risk of heart attack or stroke, which may cause death.'' [in bold type]

(ii) ''[Bullet] your risk of heart attack or stroke increases if you: [Bullet] have a history of high blood pressure or heart disease [Bullet] take this product more frequently or take more than the recommended dose''. [in bold type]

(iii) ''[Bullet] avoid foods or beverages that contain caffeine''.

[1] See § 201.66(b)(4) of this chapter for the definition of ''bullet.''

(iv) ''[Bullet] avoid dietary supplements containing ingredients reported or claimed to have a stimulant effect''.

(5) *For products containing ephedrine, ephedrine hydrochloride, ephedrine sulfate, or racephedrine hydrochloride identified in § 341.16(a), (b), (c), and (f).*—(i) The following information shall appear after the subheading ''Asthma alert: Because asthma may be life threatening, see a doctor if you'' [in bold type]:

(A) ''[Bullet] are not better in 60 minutes''.

(B) ''[Bullet] get worse''.

(C) ''[Bullet] need more than [insert total number of dosage units that equals 150 milligrams] in 24 hours''.

(D) ''[Bullet] use more than [insert total number of dosage units that equals 100 milligrams] in 24 hours for 3 or more days a week''.

(E) ''[Bullet] have more than 2 asthma attacks in a week''.

(F) ''These may be signs that your asthma is getting worse.''

(G) ''[Bullet] This product will not give you asthma relief as quickly as an inhaled bronchodilator.''

(ii) This ''Asthma alert'' shall appear on any labeling that contains warnings and shall be the first warning statement under the heading ''Warnings''.

(6) *For products containing epinephrine, epinephrine bitartrate, or racepinephrine hydrochloride identified in § 341.16(d), (e), and (g).*—(i) The following information shall appear after the subheading ''Asthma alert: Because asthma may be life threatening, see a doctor if you'' [in bold type]:

(A) ''[Bullet] are not better in 20 minutes''.

(B) ''[Bullet] get worse''.

(C) ''[Bullet] need more than 12 inhalations in 24 hours''.

(D) ''[Bullet] use more than 9 inhalations in 24 hours for 3 or more days a week''.

(E) ''[Bullet] have more than 2 asthma attacks in a week''.

(F) ''These may be signs that your asthma is getting worse.''

(ii) This ''Asthma alert'' shall appear on any labeling that contains warnings and shall be the first warning statement under the heading ''Warnings.''

(iii) *For products intended for use in a hand-held rubber bulb nebulizer.* The following statement shall also appear after the subheading ''Do not use'' along with the other information in paragraph (c)(1) of this section: ''[bullet] if product is brown in color or cloudy''.

(7) The following information shall appear after the subheading ''Stop use and ask a doctor if'' [in bold type]:

(i) ''[Bullet] your asthma is getting worse (see Asthma alert)''.

(ii) ''[Bullet] you have difficulty sleeping''.

(iii) ''[Bullet] you have a rapid heart beat''.

(iv) ''[Bullet] you have tremors, nervousness, or seizure''.

(d) *Directions.* The labeling of the product contains the following information under the heading ''Directions'':

(1) *For products containing ephedrine, ephedrine hydrochloride, ephedrine sulfate, or racephedrine hydrochloride identified in § 341.16(a), (b), (c), and (f):* (i) ''[Bullet] do not take more than directed'' [sentence appears as first bulleted statement under ''Directions'' and in bold type]

(ii) ''[Bullet] adults and children 12 years of age and over: oral dose is 12.5 to 25 milligrams every 4 hours as needed. Do not take more than 150 milligrams in 24 hours''.

(iii) ''[Bullet] children under 12 years of age: ask a doctor''.

(2) *For products containing epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride identified in § 341.16(d), (e), and (g) for use in a hand-held rubber bulb nebulizer.* The ingredient is used in an aqueous solution at a concentration equivalent to 1-percent epinephrine:

(i) ''[Bullet] do not use more than directed'' [appears as first bulleted statement under ''Directions'' and in bold type].

(ii) ''[Bullet] adults and children 4 years of age and over: 1 to 3 inhalations not more often than every 3 hours. Do not use more than 12 inhalations in 24 hours. The use of this product by children should be supervised by an adult.''

(iii) ''[Bullet] children under 4 years of age: ask a doctor''.

* * * * *

Dated: July 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

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

Appendices

Appendix A. Definitions

Population at Risk: Population with asthma x percent of individuals with asthma using OTC bronchodilators as monotherapy x percent of individuals with mild-to-moderate asthma using OTC epinephrine inhalers

Physician visits: Population at risk x percent of total ambulatory visits related to asthma x percent of ambulatory visits due to medication adverse effects

Emergency Department (ED) Visits: Population at risk x percent of ED visits related to asthma x percent of ED visits related to medication adverse effects x percent of ED visits of patients with acute asthma that were discharged

Inpatient Hospital Stays: Population at risk x percent of total ambulatory visits related to asthma x percent of hospital discharges due to asthma x percent of adverse effects related to medication

ED Hospital Stays: Population at risk x percent of ED visits related to all asthma conditions that resulted in hospitalizations x percent of ED visits related to medication adverse effects x percent of ED visits of patients with acute asthma that were admitted

Lives Saved: Mortality due to asthma x percent of individuals with mild-to-moderate asthma using non-prescription OTC ephedrine x percent of fatal asthma deaths where patient used was using epinephrine.

Note: See Appendix B for values and sources.

Appendix B. Values and Sources Used for Estimated Benefits Calculations

	Value	Source
Individuals with Asthma that use OTC Bronchodilators as Monotherapy	5–10%	Ref. 10
Individuals with Mild-to-moderate Asthma Using OTC Epinephrine Inhalers	20%	Ref. 12
Individuals with Acute Asthma Visiting the ED and Requiring Admission	20–30%	Ref. 21
Fatal Asthma Cases and Use of OTC Epinephrine	5%	Ref. 15
Population with Asthma (Adults and Children)	24,587,000	Refs. 22, 23
Total Ambulatory Visits	994,321,000	Ref. 24
Total Ambulatory Visits, Asthma	13,872,000	Ref. 24
Total Visits, Injury-related	106,451,000	Ref. 24
Total Visits, Injury-related due to Medication Adverse Effects	8,752,000	Ref. 24
Total ED Visits	116,802,000	Ref. 25
Total ED Visits, Asthma	1,750,000	Ref. 25

	Value	Source
Total ED Visits, Injury-related	39,395,000	Ref. 25
Total ED Visits, Injury-related due to Medication Adverse Effects	716,000	Ref. 25
Total ED Visits, Admitted	14,641,000	Ref. 25
Total ED Visits, Admitted with Asthma	158,000	Ref. 25
Total Hospital Discharges	34,369,000	Ref. 18
Total Hospital Discharges, Asthma	456,000	Ref. 18
Mortality, Asthma	3,447	Ref. 11

[FR Doc. 2011–18347 Filed 7–25–11; 8:45 am]
BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. FDA–2011–N–0466]

Medical Devices; Neurological Devices; Classification of Repetitive Transcranial Magnetic Stimulation System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the repetitive transcranial magnetic stimulation (rTMS) system into class II (special controls). The Agency is classifying this device type into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of these devices.

DATES: This final rule is effective August 25, 2011.

FOR FURTHER INFORMATION CONTACT: Ann H. Costello, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 2460, Silver Spring, MD 20993–0002, 301–796–6493.

SUPPLEMENTARY INFORMATION:

I. What is the background of this rulemaking?

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless the device is classified or reclassified into class I or class II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act (21 U.S.C. 360c(i)), to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 of FDA's regulations (21 CFR part 807).

Section 513(f)(2) of the FD&C Act provides that any person who submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1), request FDA to classify the device under the criteria set forth in section 513(a)(1). FDA must, within 60 days of receiving such a request, classify the device by written order. This classification will be the initial classification of the device type. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing this classification (section 513(f)(2) of the FD&C Act).

In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on April 27, 2007, classifying the NeuroStar® TMS System for the treatment of major depressive disorder in patients who have failed to receive benefit from one antidepressant trial into class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or class II. On May 23, 2007, Neuronetics, Inc., submitted a petition requesting classification, under section 513(f)(2) of the FD&C Act, of the NeuroStar® TMS System for the treatment of major depressive disorder in patients who have failed to receive benefit from one antidepressant trial. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513(a)(1) of the FD&C Act. FDA classifies devices into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the rTMS system can be classified into class II with the establishment of special controls. FDA believes that these special controls, in addition to general controls, are adequate to provide reasonable assurance of the safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document entitled ''Class II Special Controls Guidance Document: Repetitive Transcranial Magnetic Stimulation System,'' which will serve as the special control for rTMS systems.

The device is assigned the generic name ''Repetitive Transcranial Magnetic Stimulation System.'' A repetitive transcranial magnetic stimulation system is an external device that delivers transcranial repetitive pulsed magnetic fields of sufficient magnitude to induce neural action potentials in the prefrontal cortex to treat the symptoms of major depressive disorder without inducing seizure in patients who have failed at least one antidepressant medication and are currently not on any antidepressant therapy.

FDA has identified the risks to health associated with this type of device as follows:

- Failure to identify correct patient population;
- Ineffective treatment;
- Seizure;
- Scalp discomfort, scalp burn, or other adverse effects;
- Magnetic field effects on functioning of other medical devices;
- Adverse tissue reaction;
- Hazards associated with electrical equipment;
- Hazards caused by electromagnetic interference and electrostatic discharge hazards; and
- Hearing loss.

FDA believes that the class II special controls guidance document will aid in

mitigating the potential risks to health as described in table 1 of this document.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES

Identified risk	Mitigation measures
Failure to identify correct patient population	Clinical testing. Labeling.
Ineffective treatment	Nonclinical analysis and testing. Software life cycle and risk management. Clinical testing. Labeling.
Seizure	Nonclinical analysis and testing. Clinical testing. Labeling.
Scalp discomfort, scalp burn, or other adverse effects	Nonclinical analysis and testing. Software life cycle and risk management. Clinical testing. Labeling.
Magnetic field effects on functioning of other medical devices	Non-clinical analysis and testing. Labeling.
Adverse tissue reaction	Biocompatibility.
Hazards associated with electrical equipment	Electrical equipment safety. Labeling.
Hazards caused by electromagnetic interference and electrostatic discharge hazards	Electromagnetic compatibility. Labeling.
Hearing loss	Labeling.

FDA believes that the special controls, in addition to general controls, address the risks to health identified previously in this document and provide reasonable assurances of the safety and effectiveness of the device type. Thus, on October 7, 2008, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification by adding § 882.5805.

Following the effective date of the final classification rule, manufacturers will need to address the issues covered in the special controls guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirement under section 510(k), if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device and, therefore, the type of device is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the rTMS system they intend to market.

II. What is the environmental impact of this rule?

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. Thus, neither an environmental assessment nor an environmental impact statement is required.

III. What is the economic impact of this rule?

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 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 classification of this device into class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the FD&C Act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

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.

IV. Does this final rule have federalism implications?

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, Inc.* v. *Lohr*, 518 U.S. 470 (1996); and *Riegel* v. *Medtronic, Inc.*, 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).

V. How does this rule comply with the 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 (PRA) (44 U.S.C. 3501–3520) is not required.

VI. What references are on display?

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Neuronetics, Inc., May 23, 2007.

List of Subjects in 21 CFR Part 882

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 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 882.5805 is added to subpart F to read as follows:

§ 882.5805 Repetitive transcranial magnetic stimulation system.

(a) *Identification.* A repetitive transcranial magnetic stimulation system is an external device that delivers transcranial repetitive pulsed magnetic fields of sufficient magnitude to induce neural action potentials in the prefrontal cortex to treat the symptoms of major depressive disorder without inducing seizure in patients who have failed at least one antidepressant medication and are currently not on any antidepressant therapy.

(b) *Classification.* Class II (special controls). The special control is FDA's ''Class II Special Controls Guidance Document: Repetitive Transcranial Magnetic Stimulation System.'' See § 882.1(e) for the availability of this guidance document.

Dated: July 20, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–18806 Filed 7–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9532]

RIN 1545–BK30

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB45

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 147

[CMS–9993–CN]

RIN 0938–AQ66

Group Health Plans and Health Insurance Issuers: Rules Relating to Internal Claims and Appeals and External Review Processes; Correction

AGENCIES: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Correction of amendment to interim final rules with request for comments.

SUMMARY: This document corrects technical errors that appeared in the June 24, 2011 amendment to the interim final rules (76 FR 37208) entitled, ''Group Health Plans and Health Insurance Issuers: Rules Relating to Internal Claims and Appeals and External Review Processes.''

DATES: *Effective Date:* July 22, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Kuhn, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (301) 492–4263; Amy Turner, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; or Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 622–6080.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

In FR Doc. 2011–15890 of June 24, 2011 (76 FR 37208), there were technical errors that are identified in the ''Summary of Errors'' section and corrected in the ''Correction of Errors'' section below. The provisions in this correction notice are effective as if they had been included in the June 24, 2011 interim final rule with request for comments entitled, ''Group Health Plans and Health Insurance Issuers: Rules Relating to Internal Claims and Appeals and External Review Processes.'' Accordingly, the corrections are effective July 22, 2011.

B. Regulations Overview

On July 23, 2010, the Departments of Health and Human Services (HHS), Labor (DOL), and the Treasury (collectively, the Departments) issued interim final rules implementing section 2719 of the Public Health Service (PHS) Act (75 FR 43330) (July 2010 regulations), regarding internal claims and appeals and external review processes for group health plans and health insurance issuers offering coverage in the group and individual markets.[1] The Departments issued an amendment to the interim final rules that was published in the **Federal Register** on June 24, 2011 (76 FR 37208) (June 2011 amendments). Below, we summarize the errors in the June 2011 amendments and describe the corrections we are making in this notice.

II. Summary of Errors

A. Error in the Preamble

In the **FOR FURTHER INFORMATION CONTACT** section of the June 2011 amendments (page 37208), we listed an incorrect telephone number for Ellen Kuhn, Centers for Medicare & Medicaid Services, Department of Health and Human Services. We are correcting the telephone number.

[1] The requirements of PHS Act section 2719 and the July 2010 regulations do not apply to health plans grandfathered under section 1251 of the Affordable Care Act.

B. Errors in the Regulations Text

In the June 2011 amendments (page 37231), we inadvertently made a typographical error in the DOL regulations text that could cause confusion. The text pertains to the effective date of the suspension of the general rule defining the scope of what is appealable in external review. We are correcting this typographical error. We note that the regulation text for HHS and the Department of the Treasury were correct and therefore are unchanged.

In the joint preamble to the June 2011 amendments (pages 37209 through 37215), we explain that the July 2010 regulations established requirements for group health plans and health insurance issuers offering both individual and group health coverage and that the June 2011 amendments were modifying those requirements. However, the regulations text in the June 2011 amendments only reflected the changes to the group market provisions, which appear in all three Departments' regulations (pages 37228 through 37229; 37230 through 37231; and 37232 through 37233). Requirements that apply to the individual market only appear in HHS regulations, and conforming amendments to those requirements were inadvertently omitted from the regulation text of the June 2011 amendments. In the regulations text at 45 CFR 147.136, HHS is correcting this technical error. Specifically, we are reorganizing § 147.136(b)(3)(ii) and adding language to clarify that these amendments apply to health insurance issuers offering individual health coverage. These changes relate to internal claims and appeals processes requirements for individual health insurance issuers in the HHS regulations text. We note that the regulations text for the DOL and the Department of the Treasury were correct and therefore are unchanged.

III. Waiver of Proposed Rulemaking and Waiver of the Delay in Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), while a general notice of proposed rulemaking and an opportunity for public comment is generally required before the promulgation of regulations, this is not required when an agency, for good cause, finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the reasons for that finding in the notice.

The APA also generally requires that a final rule be effective no sooner than 30 days after the date of publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds good cause why the effective date should not be delayed, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This document merely corrects technical errors made in the June 2011 amendments published in the **Federal Register** on June 24, 2011 (76 FR 37208), which will be effective on July 22, 2011. The corrections contained in this document are consistent with and do not make substantive changes to the policies adopted in the June 2011 amendments. The preamble to the June 2011 amendments correctly refers to and discusses the substance of the sections affected by this technical correction. Therefore, we find for good cause that it is unnecessary and would be contrary to the public interest to undertake further notice and comment procedures to incorporate these corrections. Furthermore, we note that the June 2011 amendments were published, for good cause, as interim final rules, and that all the reasons stated in the June 2011 amendments for waiving notice and comment procedures with respect to the June 2011 amendments are applicable to this correction notice.

We are also waiving the 30-day delay in effective date for these corrections. We believe that it is in the public interest to ensure that the June 2011 amendments setting forth requirements for group health plans and health insurance issuers relating to internal claims and appeals and external review processes accurately states our policies as of the date they take effect. Therefore, we find that delaying the effective date of these corrections beyond the effective date of the June 2011 amendments would be contrary to the public interest. In doing so, we find good cause to waive the 30-day delay in the effective date.

IV. Correction of Errors

In FR Doc. 2011–15890 of June 24, 2011 (76 FR 37208), make the following corrections:

A. Correction to the Preamble

On page 37208, in the third column, under the **FOR FURTHER INFORMATION CONTACT** section, the telephone number ''(301) 492–4100'' for Ellen Kuhn, Centers for Medicare & Medicaid Services, Department of Health and Human Services, is corrected to read ''(301) 492–4263.''

B. Correction to the Regulations Text

29 CFR 2590.715–2719 [Corrected]

1. On page 37231, in the third column, in paragraph (d)(1)(ii), the phrase ''with respect to claims for which external review has not been initiated before the effective date of this paragraph (d)(1) (September 20, 2011),'' is corrected to read ''with respect to claims for which external review has not been initiated before September 20, 2011,''.

45 CFR 147.136 [Corrected]

2. On page 37232, in the third column, after the amendatory instruction 3. and before the phrase ''The revisions and additions read as follows'', add the following amendatory instructions to read as follows:

''4. Revising paragraphs (b)(3)(ii)(B), (b)(3)(ii)(E)(*1*), and (b)(3)(ii)(F).''

''5. Redesignating paragraphs (b)(3)(ii)(E)(*2*), (b)(3)(ii)(E)(*3*), and (b)(3)(ii)(E)(*4*), as (b)(3)(ii)(E)(*3*), (b)(3)(ii)(E)(*4*), and (b)(3)(ii)(E)(*5*), respectively.''

''6. Adding a new paragraph (b)(3)(ii)(E)(*2*).''

3. On page 37233, in the second column, after the five asterisks ''* * * * *'' and before the paragraph ''(c) * * *,'' add the following:

(b) * * *

(3) * * *

(ii) * * *

(B) *Expedited notification of benefit determinations involving urgent care.* The requirements of 29 CFR 2560.503–1(f)(2)(i) (which generally provide, among other things, in the case of urgent care claims for notification of the issuer's benefit determination (whether adverse or not) as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of the claim) continue to apply to the issuer. For purposes of this paragraph (b)(3)(ii)(B), a claim involving urgent care has the meaning given in 29 CFR 2560.503–1(m)(1), as determined by the attending provider, and the issuer shall defer to such determination of the attending provider.

* * * * *

(E) * * *

(*1*) The issuer must ensure that any notice of adverse benefit determination or final internal adverse benefit determination includes information sufficient to identify the claim involved (including the date of service, the name of the health care provider, the claim amount (if applicable), and a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning, and the

treatment code and its corresponding meaning).

(*2*) The issuer must provide to participants and beneficiaries, as soon as practicable, upon request, the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning, associated with any adverse benefit determination or final internal adverse benefit determination. The issuer must not consider a request for such diagnosis and treatment information, in itself, to be a request for an internal appeal under this paragraph (b) or an external review under paragraphs (c) and (d) of this section.

* * * * *

(F) *Deemed exhaustion of internal claims and appeals processes*—(*1*) In the case of an issuer that fails to adhere to all the requirements of this paragraph (b)(3) with respect to a claim, the claimant is deemed to have exhausted the internal claims and appeals process of this paragraph (b), except as provided in paragraph (b)(3)(ii)(F)(*2*) of this section. Accordingly, the claimant may initiate an external review under paragraph (c) or (d) of this section, as applicable. The claimant is also entitled to pursue any available remedies under State law, as applicable, on the basis that the issuer has failed to provide a reasonable internal claims and appeals process that would yield a decision on the merits of the claim.

(*2*) Notwithstanding paragraph (b)(3)(ii)(F)(*1*) of this section, the internal claims and appeals process of this paragraph (b) will not be deemed exhausted based on *de minimis* violations that do not cause, and are not likely to cause, prejudice or harm to the claimant so long as the issuer demonstrates that the violation was for good cause or due to matters beyond the control of the issuer and that the violation occurred in the context of an ongoing, good faith exchange of information between the issuer and the claimant. This exception is not available if the violation is part of a pattern or practice of violations by the issuer. The claimant may request a written explanation of the violation from the issuer, and the issuer must provide such explanation within 10 days, including a specific description of its bases, if any, for asserting that the violation should not cause the internal claims and appeals process of this paragraph (b) to be deemed exhausted. If an external reviewer or a court rejects the claimant's request for immediate review under paragraph (b)(3)(ii)(F)(*1*) of this section on the basis that the issuer met the standards for the exception under this paragraph (b)(3)(ii)(F)(*2*), the claimant has the right to resubmit and pursue the internal appeal of the claim. In such a case, within a reasonable time after the external reviewer or court rejects the claim for immediate review (not to exceed 10 days), the issuer shall provide the claimant with notice of the opportunity to resubmit and pursue the internal appeal of the claim. Time periods for re-filing the claim shall begin to run upon claimant's receipt of such notice.

Signed this 15th day of July 2011.

Diane O. Williams,

Federal Register Liaison, Internal Revenue Service, Department of the Treasury.

Signed this 20th day of July 2011.

Daniel J. Maguire,

Director, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Department of Labor.

Signed this 20th day of July 2011.

Dawn Smalls,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2011–18820 Filed 7–22–11; 4:15 pm]

BILLING CODE 4820–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0042;FRL–9279–3]

Revisions to the California State Implementation Plan, Northern Sierra Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Northern Sierra Air Quality Management District (NSAQMD), Sacramento Metropolitan Air Quality Management District (SMAQMD), and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from gasoline dispensing facilities, polyester resin operations, and spray booth facilities. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 26, 2011 without further notice, unless EPA receives adverse comments by August 25, 2011. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0198, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: David Grounds, EPA Region IX, (415) 972–3019, *grounds.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
NSAQMD	215	Phase II Vapor Recovery	02/22/10	07/20/10
SMAQMD	465	Polyester Resin Operations	09/25/08	09/15/09
SCAQMD	1132	Further Control of VOC Emissions From High-Emitting Spray Booth Facilities	05/05/06	01/10/10
SCAQMD	1162	Polyester Resin Operations	07/08/05	04/06/09

On August 25, 2010, EPA determined that the submittal for NSAQMD Rule 215 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review. On January 21, 2010, EPA determined that the submittal for SMAQMD Rule 465 met the completeness criteria. On February 4, 2010, EPA determined that the submittal for SCAQMD Rule 1132 met the completeness criteria. On May 13, 2009, EPA determined that the submittal for SCAQMD Rule 1162 met the completeness criteria.

B. Are there other versions of these rules?

We approved an earlier version of SCAQMD Rule 1132 into the SIP on 04/26/04 (69 FR 22445). We approved an earlier version of SCAQMD Rule 1162 into the SIP on 02/12/02 (67 FR 6410). No earlier versions of NSAQMD Rule 215 and SMAQMD Rule 465 were approved into the SIP.

C. What is the purpose of the submitted rule revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. NSAQMD Rule 215 imposes more stringent requirements on VOC emissions from gasoline dispensing facilities, SCAQMD Rule 1132 imposes more stringent requirements on VOC emissions from spray booth facilities, while SCAQMD Rule 1162 and SMAQMD Rule 465 impose more stringent requirements on VOC emissions from polyester resin operations. EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). The NSAQMD, SMAQMD, and SCAQMD all regulate ozone nonattainment areas (see 40 CFR part 81), so Rule 215, 465, 1132, and 1162 must fulfill RACT. Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities,'' (EPA–450/3–91–022).
4. ''Gasoline Dispensing Facilities—Stage II Vapor Recovery,'' EPA's Draft Model Rule, August 17, 1992.
5. ''Gasoline Vapor Recovery Guidelines,'' EPA Region IX, April 24, 2000.
6. ''Control Techniques Guidelines for Industrial Cleaning Solvents,'' (EPA–453/R–06–001, 9/06).
7. ''Control of VOC Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins,'' (EPA–450/3–83–008, 11/83).
8. ''Control of VOC Fugitive Emissions fro Synthetic Organic Chemical Polymer and Resin manufacturing Equipment,'' (EPA–450/3–83–006, 3/84).
9. ''Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials,'' (EPA–453/R–08–004, 9/08).
10. ''Control Techniques for Miscellaneous Metal and Plastic Parts Coatings,'' (EPA–453/R–08–003).
11. ''Control Techniques Guidelines for Industrial Cleaning Solvents,'' (EPA–453/R–06–001, 9/06).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluations.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agencies modify the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 25, 2011, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 26, 2011. This will incorporate these rules into the Federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment,

paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not interfere with Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) because EPA lacks the discretionary authority to address environmental justice in this rulemaking.

In addition, these rules 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.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 15, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(366)(i)(B)(*3*), (377)(i)(A)(*4*), (378)(i)(A)(*2*) and (381)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(366) * * *

(i) * * *

(B) * * *

(*3*) Rule 1162, ''Polyester Resin Operations,'' amended on July 8, 2005.

* * * * *

(377) * * *

(i) * * *

(A) * * *

(*4*) Rule 465, ''Polyester Resin Operations,'' amended on September 25, 2008.

* * * * *

(378) * * *

(i) * * *

(A) * * *

(*2*) Rule 1132, ''Further Control of VOC Emissions From High-Emitting Spray Booth Facilities,'' amended on May 5, 2006.

* * * * *

(381) * * *

(i) * * *

(D) Northern Sierra Air Quality Management District

(*1*) Rule 215, ''Phase II Vapor Recovery System Requirements,'' amended on February 22, 2010.

* * * * *

[FR Doc. 2011–18872 Filed 7–25–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WC Docket No. 07–245, GN Docket No. 09–51; Report No. 2931]

A National Broadband Plan for Our Future; Petition for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding concerning a

national broadband plan for our future and published pursuant to 47 CFR 1.429(e). *See* 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)).

DATES: Oppositions to Petitions must be filed by August 10, 2011. Replies to an opposition must be filed August 22, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer Prime, Wireline Competition Bureau, 202–418–2403.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 2931, released June 20, 2011. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

Subject: In the Matter of Implementation of Section 224 of the Act (WC Docket No. 07–245); A National Broadband Plan for our Future (GN Docket No. 09–51).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. 2011–18090 Filed 7–25–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 107

[Docket Nos. PHMSA–2009–0410 (HM–233B)]

RIN 2137–AE73

Hazardous Materials Transportation: Revisions of Special Permits Procedures; Response to Appeals; Corrections

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Correcting Amendments.

SUMMARY: On January 5, 2011, PHMSA published a final rule under Docket Number PHMSA–2009–0410 (HM–233B) that amended the Hazardous Materials Regulations to revise the application procedures for special permits. Specifically, the revisions required an applicant to provide additional information about its operation to enable the agency to better evaluate the applicant's ability to demonstrate an equivalent level of safety and the safety impact of operations that would be authorized in the special permit. In response to appeals submitted by entities affected by the January 5 final rule, this final rule amends requirements and provides additional clarification to the January 5 final rule.

DATES: *Effective Date:* The effective date of these amendments is July 26, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Andrews or Mr. T. Glenn Foster, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Administration (PHMSA), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, PHH–12, Washington, DC 20590–0001 or Mr. Ryan Paquet, Approvals and Permits Division, (202) 366–4511, PHMSA, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, PHH–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Supplementary Background
II. Appeals to the Final Rule
  A. Council on Safe Transportation of Hazardous Articles, Inc.
  B. Institute of Makers of Explosives
  C. Lawrence Bierlein
III. Corrections and Amendments
IV. Regulatory Analyses and Notices
  A. Statutory/Legal Authority for Rulemaking
  B. Executive Order 12866, 13356 and DOT Regulatory Policies and Procedures
  C. Executive Order 13132
  D. Executive Order 13175
  E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
  F. Unfunded Mandates Reform Act of 1995
  G. Paperwork Reduction Act
  H. Regulation Identifier Number (RIN)
  I. Privacy Act

I. Supplementary Background

On January 5, 2011, PHMSA issued a final rule under Docket Number PHMSA–2009–0410 (HM–233B) (76 FR 454) amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) by amending the Hazardous Materials Regulations to revise the application procedures for special permits. Specifically, the revisions required an applicant to provide additional information about its operation to enable the agency to better evaluate the applicant's ability to demonstrate an equivalent level of safety and the safety impact of operations that would be authorized in the special permit. In addition, the January 5 final rule made revisions to the procedures for applying for a special permit. Changes made to these procedures include, but are not limited, requiring applicants to provide: All known locations where a special permit is used; the name of the company Chief Executive Officer (CEO) or president; a Dun and Bradstreet Data Universal Numbering System (DUNS) identifier; an estimated quantity of the hazardous material planned for transportation; an estimate of the number of operations expected to be conducted; a statement outlining the reason(s) the hazardous material is being transported by air if other modes are available; and substantiation that the proposed alternative will achieve a level of safety that is at least equal to that required by the regulation from which the special permit is sought.

II. Appeals to the Final Rule

The following organizations and one individual submitted appeals to the January 5 final rule, in accordance with 49 CFR part 107: The Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA); The Institute for Makers of Explosives (IME); and Lawrence Bierlein on behalf of the Association of Hazmat Shippers. The appellants based their appeals on several aspects of the January 5 final rule, most notably objecting to the requirements that applicants provide: A list of all known locations where a special permit will be used; a DUNS number; the name of the CEO or President of the company; and the quantity of hazardous materials to be shipped.

The appeals and issues of the appellants are discussed in detail below.

A. Council on Safe Transportation of Hazardous Articles, Inc.

In its appeal, COSTHA states that it recognizes the importance of requiring applications for a special permit to include relevant and usable information in the special permit application. In support of its appeal, COSTHA requests that PHMSA re-evaluate several of the changes made to the special permits and procedures application process. These changes include requirements to: List all known locations where a special permit will be used; provide estimates of the number of operations expected to be conducted under a special permit; list the name of the CEO or president of the company; and provide a DUNS identifier.

COSTHA also requests clarification on why additional data is needed for the application of a special permit. Specifically, COSTHA notes that PHMSA revised § 107.105(a)(2) to require the name and physical address(es) of all known locations where the special permit would be used. COSTHA indicates that many special permits are utilized through a company's operational and distribution operations, and that this requirement may compel companies to report several hundred locations where the special permit may be used. In its appeal, COSTHA expresses the opinion that by requiring the reporting of all known locations a special permit will be used, PHMSA is suggesting that all locations will be subject to a possible fitness evaluation. COSTHA further states that if PHMSA is requiring all known locations for the purposes of enforcement, PHMSA needs to clarify whether updates must be made to the list after the application for a special permit has been submitted. For clarification, PHMSA's intent is for the applicant to provide a list of the initial locations a special permit is intended to be used at the time of the application. This list will help us track where various special permits are being utilized and assist the special permits division in ensuring that a special permit is being conducted in accordance with its parameters. For additional clarification, PHMSA is not requiring applicants to resubmit an application for those facilities using a special permit after an application has been submitted. Therefore, PHMSA is retaining the requirement for reporting all known locations where the special permit will be used because we believe it is necessary to adequately determine that all facilities conducting business under the special permit are able to demonstrate an equivalent level of safety as required by regulation. In addition, PHMSA is only requiring applicants for special permits to list those facilities where a special permit will be used that are known at the time of an application and updated at the time of renewal.

COSTHA also expresses concern that PHMSA did not adequately address the additional burden to industry when adding the new requirements in the January 5 final rule. We disagree. PHMSA carefully examined the burden that the new requirements would have on special permit applicants and determined that, although we are requiring additional information, much of the data is already readily available to applicants. In addition, we believe that the additional time required to gather the information is greatly offset by the on-line application process capability provided in the January 5 final rule.

In its appeal, COSTHA asks PHMSA to reconsider the requirement for applicants to provide the name of the CEO or president of the company. COSTHA notes that it is not uncommon for CEOs and presidents to change frequently due to the reorganization of a company or other reasons, and asks whether a special permit holder would be required to amend its application to reflect these changes. We agree. The intent of this requirement is to provide the identification of a senior official in the company who has responsibility for overseeing the overall hazardous materials regulatory compliance of the company, especially the operations under the terms of the special permit. Accordingly, we recognize that other corporate officials may be more appropriately identified. Therefore, PHMSA is revising this requirement to provide for the identification of a senior corporate official with such oversight duties.

COSTHA's appeal asks PHMSA to reconsider the requirement for applicants to obtain and provide a DUNS identifier. COSTHA states that this number is typically used for credit and business transactions. COSTHA also adds that the adopted language does not indicate whether the DUNS identifier is optional. For clarification, the DUNS number is a mandatory requirement. PHMSA chose this identifier as it does not impose a cost on applicants to obtain it. The DUNS identifier will then be used as the identification number for a facility when renewing a special permit or applying for other new special permits. For additional clarification, in the case of companies who have multiple DUNS identifier, PHMSA is requiring that applicants provide only one DUNS identifier that is most applicable to the location for which the special permit is being utilized.

Lastly, COSTHA asks PHMSA to reconsider the requirements in § 107.105(c)(10) that requires an estimate of the number of operations expected to be conducted or the number of shipments expected to be transported under a special permit. COSTHA states that it will be impossible for companies to accurately prognosticate the number of shipments offered. COSTHA also indicates that it is not satisfied with PHMSA's explanation in the preamble language in the January 5 final rule regarding why it needs applicants to provide an estimate of the number of shipments based on the best available information. We disagree. Collecting this additional information will help us to better ensure an equivalent level of safety is reached for each special permit application. Applicants must make a reasonable estimate of the amount of shipments that will take place over the duration of the special permit. PHMSA expects applicants to provide an estimate of the number of packages to be shipped for the duration of the special permit, based on the history of previous shipments transported under the terms of a special permit. In addition, if this is the initial application for a special permit, PHMSA believes that a reasonable estimate of the amount of shipments that will take place over the duration of the special permit will be sufficient when applying for a special permit.

B. Institute for Makers of Explosives

In support of its appeal, IME requests that PHMSA re-evaluate several of the changes made to the special permits and procedures application process. These changes include the requirements to: list all known locations where a special permit will be used; provide a description of operational controls; and provide a statement outlining the reason(s) the hazardous material is being transported by air. IME also questions whether PHMSA conducted an adequate cost/benefit analysis in support of this final rule.

In its appeal, IME questions why, in light of the exceptional safety record of the commercial explosive industry, PHMSA is imposing additional requirements without any stated foundation in underlying safety concerns, perceived risk, or incident data. Although these requirements apply to the commercial explosives industry, they apply equally to all entities applying for a special permit. These additional requirements will increase overall safety by providing us with a more accurate description of how an applicant has established a level of safety at least equivalent to the requirements of the HMR when transporting its particular commodity.

IME also requests clarification of the phrase ''would be used'' as it pertains to the requirement in § 107.105(a)(2), that ''applicants for a special permit list all known locations where the special permit would be used.'' Specifically, IME asks whether this language refers to locations where vehicles are based, or to all locations where such a vehicle operates and/or delivers materials. For clarification, PHMSA is not requesting a list of facilities where hazardous materials moving under a special permit

are being delivered. Rather, we are seeking a list of locations where the special permit will initially be used at the time of application. Under the scenario of a truck operating under a special permit, we are only seeking the address of the location at which the truck is based.

IME notes that in the January 5, 2011 final rule, we adopted new provision § 107.105(c)(2) to require a description of all operational controls required for the mode(s) of transportation. IME asserts that this requirement is vague and it is unclear what level of detail is required of industry when reporting a description of these operational controls. For clarification, by requesting that applicants provide a description of operational controls, our intent is for applicants to provide any relevant schematics, diagrams, or description of the means that would be utilized under the conditions of a special permit, and will vary, based on the individual application. If an operational control is not applicable to execute the conditions of the special permit, such reasoning should be stated in the application. For example, an operational control would be to limit transportation to private motor carriers.

IME also states that, in response to comments submitted to the Notice of Proposed Rulemaking (NPRM), PHMSA failed to illuminate the safety rationale for the provision in § 107.105(c)(5) to require applicants who propose to ship via air to provide a statement outlining the reason(s) the hazardous material is being transported by air if other modes are available. IME questions the safety rationale for this requirement and suggests that this requirement could leave open the possibility that a special permit application for air transportation could be refused on non-safety related rationales, including cost and convenience. We disagree. PHMSA stresses that we have no intention of denying a special permit application simply based on the shipment being transported by air. PHMSA will continue to review the applicants' submission and approve those applications, regardless of the particular mode of transportation, that are determined to provide an equivalent level of safety.

IME also questions PHMSA's analysis for the additional cost and time that will be incurred by applicants because of the increased special permit application requirements. IME adds that while it supports a simplified electronic application, the process of researching and assembling the additional information required will exceed PHMSA's estimate to complete the revised special permit application. We disagree. PHMSA did conduct a review of the information collection burden with respect to this rulemaking, and determined that while we expect some increased burden from the collection of additional information, the overall application process will become less burdensome, and therefore, less time-consuming with the introduction of the online application process.

C. Lawrence Bierlein, esq.

PHMSA also received an appeal to the final rule from Lawrence W. Bierlein on February 2, 2011. In support of his appeal, Mr. Bierlein requests that PHMSA re-evaluate several of the changes made to the special permits and procedures application process. These changes include the requirements to: List all known locations where a special permit will be used; list the CEO or president of the company; provide a DUNS identifier; provide a hazardous materials registration number; provide a statement justifying shipments by air; provide a quantity or number of packages to be shipped; and provide a failure mode and effect analysis to justify a special permit proposal. In addition, Mr. Bierlein also raises questions pertaining to: Increased regulations without a safety benefit; compliance and inspection issues; excessive paperwork; fitness determinations; and the security of on-line applications.

Mr. Bierlein questions whether the January 5 final rule has anything to do with safety in transportation, and states his belief that the goal of this final rule is to ease the burden on compliance inspectors and enforcement programs without regard to cost. He further adds that his clients do not believe any of the additional requirements falls within the ambit of the secretary's authority to regulate transportation under the Hazardous Materials Transportation Act (HMTA). We disagree. PHMSA is confident that the additional requirements in this final rule will help us to better determine if an applicant is meeting an equivalent of safety under a special permit.

In his appeal, Mr. Bierlein adds that the new requirements in this final rule are outrageously excessive and will overburden PHMSA with paperwork. He adds that it will be impossible for PHMSA or its modal administrations to monitor substantially more locations given its already limited field staff. In addition, Mr. Bierlein states that requiring additional information will put a substantial burden on both PHMSA and the regulated community. We disagree. The additional information requested is vital to accurately assess an equivalent level of safety and the paperwork burden is greatly offset by the on-line application capability. Through the addition of an online application system, PHMSA will be dramatically reducing the amount of time required by applicants to apply for a special permit. In addition, the online application system, through increased automation, will dramatically reduce the amount of time required by PHMSA to review and process special permit application. The overall effect of this rulemaking will be a more efficient and timely special permit application process.

Mr. Bierlein also states that PHMSA is putting too much emphasis on ''fitness.'' He contends that while seriously unfit applicants should not hold a special permit authorization, adding more criteria to the fitness process is not necessary to avoid such a situation. While PHMSA acknowledges this argument, collecting this additional information will help us to better ensure an equivalent level of safety is reached for each special permit application.

In his appeal, Mr. Bierlein also notes that in response to a public meeting held in August, 2010 on fitness, Mr. Bierlein filed a joint written statement declaring that the criteria for which field inspectors will determine safety and fitness are both unspecified and undefined. While PHMSA acknowledges his comment, the fitness criteria Mr. Bierlein describes is not within the scope of this rulemaking.

In Mr. Bierlein's appeal, he notes that the new requirements in §§ 107.105(a)(2), 107.107(b)(3), and 107.109(a)(3) ask for the physical address(es) of all known locations where the applicant will use the special permit, and states that each downstream distribution center, public warehouse, and forwarder is considered a user of the special permit. Mr. Bierlein questions PHMSA's need for such a voluminous amount of information. We disagree. The intent of this requirement is to identify the initial location where an applicant will use the special permit. It is not intended that all downstream entities that make subsequent shipments be identified. For example, for a special permit authorizing the use of a packaging not otherwise authorized under the HMR, the address of the initial entity(ies) that prepares the package under the special permit would be identified. Persons who merely receive and reship these packages are not required to be identified in the application or renewal.

Mr. Bierlein's appeal asks us to reconsider the requirement for

applicants to provide the CEO or president of the company. Mr. Bierlein notes that in only the smallest companies would the CEO be aware of the hazardous materials transportation functions executed by that company, and communication should be between PHMSA and the person with the most knowledge about the special permit. We agree, and as previously mentioned, are revising this requirement to provide for the identification of a senior corporate official with such oversight duties.

Mr. Bierlein questions the requirement to require the DUNS identifier because it has no value. We disagree. The DUNS identifier provides applicants with a unique number that will link all data for a particular company. This will ensure that all data on a company is identified with that company and prevent companies from being in the system with multiple variations of that company's spelling. For example, company ABCD, Inc. may be entered into these data systems in a number of ways, (*i.e.,* A,B.C.D., Inc.; Alpha, Beta, Charlie, Delta, Inc.; ABCD Company; *etc.*)

Mr. Bierlein also states that PHMSA should not require applicants to report their hazardous materials registration number and notes that there are many applicants for special permits who are not required to have registration numbers. Mr. Bierlein adds that the greatest number of users comes from government agencies such as the Federal Aviation Administration (FAA), the National Aeronautics and Space Administration (NASA), and the Department of Defense (DOD), and requiring the registration numbers is useless and discriminatory against industry. We disagree. A large majority of special permit applications come from industry, not government. We also note that we are requiring only those facilities that already have a registration number to report that registration number as part of the application process. This information is necessary in order to ensure that applicants who are required to register have actually done so. For applicants not required to be registered, we are requiring only a simple statement indicating that registration is not required.

Mr. Bierlein objects to the requirement that a statement be provided outlining the reason(s) the hazardous material is being transported by air if other modes are available. Mr. Bierlein expresses a belief that the implementation of this requirement is intended to restrict or prohibit hazardous materials air shipments being transported under a special permit. Mr. Bierlein also suggests that a more detailed, transparent, and substantive safety rationale be provided in a new rulemaking before air shipments are banned under a special permit. We disagree. A statement outlining the reason(s) the hazardous material is being transported is necessary to determine that an equivalent level of safety is being met for air transportation. PHMSA will continue to review the applicant's submissions and approve those applications based on a determination that it meets an equivalent level of safety. We stress that we have no intention of denying special permits simply based on the method of transportation.

Mr. Bierlein objects to the requirement for applicants to use a failure mode and effect analysis (FMEA), stating that it is excessive for special permits pertaining to minor variations from the hazardous materials regulations. Mr. Bierlein recommends we revise this requirement by limiting it to a short list of high hazard materials, or materials shipped in innovative packages exceeding 3,000 liters water capacity. We disagree. We maintain our belief that this information, along with the other required information, will help establish whether an applicant has met an equivalent level of safety for the safe transportation of hazardous materials under the guidelines of a special permit. For clarification, applicants are not required to use a FMEA, they are only required to prove with data or test results that they will achieve an equivalent level of safety equal to that required by regulation when seeking a special permit. Additionally, a FMEA was provided in the final rule as an example of how to meet this requirement.

Mr. Bierlein also states there is no credible rationale for the requirement to provide a quantity of material or number of packages to be shipped, and contends that PHMSA's statement in the final rule that this information will enable us to better evaluate an applicant's ability to safely transport hazardous materials is self-serving without factual support. We disagree. We maintain our belief that this information, along with the other required information, will help establish whether an applicant has met an equivalent level of safety for the safe transportation of hazardous materials under the guidelines of a special permit.

Lastly, Mr. Bierlein notes that PHMSA's on-line application process found on the PHMSA website continues to display the warning that it has been penetrated by hackers. For clarification, the statement on PHMSAs website reads, ''We have been alerted of a potential phishing website not associated with PHMSA collecting data for Fireworks (EX) Number Applications. It is highly advised that you do not submit application data on any other web site not sanctioned by PHMSA.'' This warning only advises applicants to use the official link on the PHMSA website to apply for special permits and not third party links to ensure applicants are submitting their data correctly to PHMSA. PHMSA's on-line application process has not been hacked.

III. Corrections and Amendments

In this final rule, we are making corrections to sections that were amended by the January 5, 2011 final rule by reinserting language that was inadvertently deleted in the final rule and clarifying that a table of contents is only required for paper submissions. None of the corrected sections are new requirements. The corrections are as follows:

Part 107

Section 107.105

This section outlines the procedures for applying for a special permit. We are revising this section to clarify that a table of contents is only required for paper submissions.

Section 107.107

This section outlines the procedures for applying for party status to a special permit. We are revising this section to reinsert language that was inadvertently removed in the January 5, 2011 final rule.

Part 109

Section 109

This section outlines the procedures for applying for a renewal of a special permit. We are revising this section to reinsert language that was inadvertently removed in the January 5, 2011 final rule.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in §§ 5103(b), 5104, 5110, or 5112 of the Federal hazardous materials transportation law to a person

transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. The final rule amends the regulations to revise the special permit application requirements and provide an on-line capability for applications.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). This final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Orders 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society. As discussed in this rulemaking, PHMSA is revising the special permits application procedures by requiring additional, more detailed information to enable the agency to strengthen its oversight of the special permits program. PHMSA recognizes there may be additional costs related to the proposals to require additional information in the special permits application procedures. However, we believe these costs are minimized by the proposals to allow for electronic means for all special permits and approvals actions, and the proposals to authorize electronic means as an alternative to written means of communication. Taken together, the provisions of this final rule will promote the continued safe transportation of hazardous materials while reducing paperwork burden on applicants and administrative costs for the agency.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule would preempt state, local and Indian tribe requirements but does not contain any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local and Indian tribe requirements on certain covered subjects.

D. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'''). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. This final rule proposes revisions to current special permit application requirements that may increase the time that would be required to complete such an application. Although many of the applicants may be small businesses or other small entities, PHMSA believes that the addition of an on-line application option will significantly reduce the burden imposed by the application requirements. Therefore, PHMSA certifies that the provisions of this final rule would not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

This final rule imposes no new information collection and recordkeeping requirements.

H. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation.

In consideration of the foregoing, we are amending 49 CFR part 107 as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Public Law 101–410 section 4 (28 U.S.C. 2461 note); Public Law 104–121 sections 212–213; Public Law 104–134 section 31001; 49 CFR 1.45, 1.53.

■ 2. In § 107.105, paragraphs (a)(1)(ii) and (iii) are revised, and paragraph (a)(1)(iv) is added, to read as follows:

§ 107.105 Application for special permit.

(a) * * *

(1) * * *

(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308;

(iii) Be submitted electronically by e-mail to: *Specialpermits@dot.gov*; or

(iv) Be submitted using PHMSA's online system (table of contents omitted) at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a.*

* * * * *

■ 3. In § 107.107, paragraph (b)(3) is revised to read as follows:

§ 107.107 Application of party status.

* * * * *

(b) * * *

(3) The application must state the name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO), president, or ranking executive officer

and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier. In addition, each applicant must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested.

* * * * *

■ 4. In § 107.109, paragraph (a)(3) is revised to read as follows:

§ 107.109 Application for renewal.

(a) * * *

(3) The application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit would be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit would be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO), president, or ranking executive officer, and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier. In addition, each applicant for renewal of party status must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested.

* * * * *

Issued in Washington, DC on July 18, 2011 under authority delegated in 49 CFR part 1.

Cynthia Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2011–18664 Filed 7–25–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100622276–0569–02]

RIN 0648–XA580

Atlantic Highly Migratory Species; Inseason Action To Close the Commercial Non-Sandbar Large Coastal Shark Research Fishery

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

ACTION: Notification of fishery closure.

SUMMARY: NMFS is closing the commercial shark research fishery for non-sandbar large coastal sharks (LCS). This action is necessary because landings for the 2011 fishing season have reached at least 80 percent of the available quota.

DATES: The commercial shark research fishery for non-sandbar LCS is closed effective 11:30 p.m. local time July 26, 2011 until, and if, NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Peter Cooper, 301–427–8503; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.5(b)(1), shark dealers are required to report to NMFS all sharks landed every two weeks. Dealer reports for fish received between the 1st and 15th of any month must be received by NMFS by the 25th of that month. Dealer reports for fish received between the 16th and the end of any month must be received by NMFS by the 10th of the following month. Under § 635.28(b)(2), when NMFS projects that fishing season landings for a species group have reached or are about to reach 80 percent of the available quota, NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species group that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for that species group is closed, even across fishing years.

On December 8, 2010 (75 FR 76302), NMFS announced that the shark research fishery for the 2011 fishing year was open and the available non-sandbar LCS research fishery quota was 37.5 metric tons (mt) dressed weight (dw) (82,673 lb dw). Dealer and observer reports received through the July 14, 2011, indicate that 31.3 mt dw or 83 percent of the available shark research fishery quota for non-sandbar LCS has been landed. Dealer reports received to date indicate that 5 percent of the quota was landed from the opening of the fishery on January 1, 2011, through January 31, 2011; 21 percent of the quota was landed in February; 15 percent of the quota was landed in March; 10 percent of the quota was landed in April; 19 percent of the quota was landed in May; and 13 percent of the quota was landed in June. The fishery has reached 83 percent of the quota, which exceeds the 80-percent limit specified in the regulations. Accordingly, NMFS is closing the commercial non-sandbar LSC research fishery as of 11:30 p.m. local time July 26, 2011. This closure does not affect any other shark fishery.

During the closure, persons engaged in a shark research fishery trip aboard vessels issued a shark research permit under 50 CFR 635.32(f) with a NMFS-approved observer onboard, may not retain non-sandbar LCS. Vessels issued a shark research permit that are engaged in a commercial shark fishing trip outside of the shark research fishery may retain non-sandbar LCS caught in the Atlantic region, as long as the Atlantic region remains open for commercial harvest of non-sandbar LCS by Atlantic shark limited access permit holders. A shark dealer issued a permit pursuant to § 635.4 may not purchase or receive non-sandbar LCS from a vessel issued a shark research permit returning from a shark research fishery trip with a NMFS-approved observer on board. Permitted shark dealers or processors may possess non-sandbar LCS that were harvested during a shark research fishery trip, as long as the non-sandbar LCS were off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary

to the public interest because the fishery is currently underway, and any delay in this action would cause overharvest of the quota and be inconsistent with management requirements and objectives. If the quota is exceeded, the affected public is likely to experience reductions in the available quota and a lack of fishing opportunities in future seasons. For these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866.

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

Dated: July 21, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–18865 Filed 7–21–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 143
Tuesday, July 26, 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

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2010–0077]

Availability of a Risk Analysis Evaluating the Foot-and-Mouth Disease Status of Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that a risk analysis has been prepared by the Animal and Plant Health Inspection Service concerning the foot-and-mouth disease (FMD) status of Japan and the risk of susceptible animals and animal products from Japan harboring the FMD virus. This evaluation will be used as a basis for determining whether the Animal and Plant Health Inspection again recognizes Japan as free of FMD and allows the importation of whole cuts of boneless beef from Japan to resume. Other ruminant meat and meat byproducts, as well as fresh pork, live ruminants, and live swine, would remain prohibited due to Japan's status for bovine spongiform encephalopathy, classical swine fever, and swine vesicular disease. We are making this evaluation available to the public for review and comment.

DATES: We will consider all comments that we receive on or before September 26, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2010-0077-0005.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2010–0077, 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-2010-0077* 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) 6902817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Kelly Rhodes, Senior Staff Veterinarian, Regionalization Evaluation Services—Import, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest and FMD. Section 94.11 lists regions of the world considered free of rinderpest and FMD but from which the importation of meat and other animal products into the United States is subject to additional restrictions because of those regions' proximity to or trading relationships with FMD-affected regions.

In an interim rule [1] effective and published in the **Federal Register** on October 25, 2010 (75 FR 65431–65432, Docket No. APHIS–2010–0077), we amended the regulations in paragraphs (a)(2) and (a)(3) of § 94.1 to remove Japan from the list of regions considered free of rinderpest and FMD and to add Japan to the list of regions considered free of rinderpest, respectively. We also amended the regulations in § 94.11 to remove Japan from the list of regions considered free of rinderpest and FMD but from which the importation of meat and other animal products of ruminants and swine into the United States is subject to additional restrictions. The interim rule also clarified that the importation into the United States of whole cuts of boneless beef, which had been allowed under the provisions in § 94.27 of the regulations, was being prohibited due to FMD. Those actions were necessary because, by July 4, 2010, Japan had reported FMD on a total of 292 premises in Miyazaki prefecture of that country to the World Organization for Animal Health (OIE).

The source of the virus has not been definitively identified. However, the Ministry of Agriculture, Forestry and Food in Japan suspects that it was introduced through people or personal goods from a nearby country contaminated with the FMD virus. Japan's official veterinary services addressed the FMD outbreak through a stamping-out policy that involved movement restrictions, culling, active surveillance, and ultimately vaccination. All vaccinated animals were subsequently culled. Intensive surveillance demonstrated that the virus did not spread outside Miyazaki prefecture. On February 4, 2011, the OIE reinstated Japan to its list of countries free of FMD without vaccination.

Although we removed Japan from the list of regions in the world considered free of rinderpest and FMD, and the list of regions considered free of rinderpest and FMD but from which the importation of meat and other animal products is subject to additional restrictions, we recognized that Japan immediately responded to the detection of the disease by imposing restrictions on the movement of susceptible animals and animal products, both within and from Japan, and initiating measures to eradicate the disease. We stated that, because of Japan's response to detection of the disease, we intended to reassess the situation in accordance with the standards of the OIE at a future date, and that as part of the reassessment process, we would consider all comments received during the comment period on the interim rule.

In this notice, we are announcing the availability for review and comment of a document titled ''APHIS Evaluation of the Foot and Mouth Disease Status of Japan.'' This evaluation examines the events that occurred during and after the outbreaks and assesses the risk of live animals and animal products from

[1] To view the interim rule and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0077.*

Japan harboring the FMD virus. This risk analysis will serve as the basis for our determination whether to reinstate Japan to the list of regions free of FMD and rinderpest and the list of regions considered free of FMD and rinderpest but from which the importation of meat and other animal products of ruminants and swine into the United States is subject to additional restrictions. The risk analysis will also serve as the basis for our determination whether to allow the resumption of the importation of whole cuts of boneless beef from Japan. We are making the risk analysis available for public comment for 60 days.

The risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the analysis when requesting copies.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 20th day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–18849 Filed 7–25–11; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1245

[Notice 11–070]

RIN 2700–AD63

Claims for Patent and Copyright Infringement

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) proposes regulations relating to requirements for the filing of claims against NASA where a potential claimant believes NASA is infringing privately owned rights in patented inventions or copyrighted works. The requirements for filing an administrative claim are important since the filing of a claim carries with it certain rights relating to the applicable statute of limitations for filing suit against the Government. The proposed regulations set forth guidelines as to what NASA considers necessary to file a claim for patent or copyright infringement, and they also provide for written notification to the claimant upon completion of an investigation by NASA.

DATES: Comments must be received on or before August 25, 2011.

ADDRESSES: Comments must be identified with ''RIN 2700–AD63'' and may be sent to NASA by the following method:

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Please note NASA may post all comments on the Internet without change, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Helen M. Galus, National Aeronautics and Space Administration, Office of the General Counsel, Washington, DC 20546–0001. Telephone 202–358–3437.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Act (51 U.S.C. 20113) authorizes the Administrator of NASA to settle administrative claims of patent and copyright infringement by NASA. In addition to that authority to acquire license rights and interests in patents and copyrights through settlement of claims, the Administrator has authority to settle claims of patent and copyright infringement pursuant to 22 U.S.C. 2356, 35 U.S.C. 183 and 286, and 28 U.S.C. 1498(b).

In accordance with these authorities, NASA is issuing proposed regulations setting forth requirements for the filing of claims against NASA where a potential claimant believes NASA is infringing privately owned rights in patented inventions or copyrighted works. The proposed regulations are designed to inform potential claimants as to what information must be supplied in their communication to NASA regarding alleged infringement before NASA will consider a claim to have been filed. The regulations identify certain commonly received communications which are concerned with rights in patents and copyrights, but which will not be considered sufficient to constitute the formal filing of a claim.

The requirements for filing an administrative claim are important since the filing of a claim carries with it certain rights relating to the applicable statute of limitations for filing suit against the Government. In the case of patent infringement claims, Title 35 U.S.C. 286 provides that the six-year statute of limitations for filing suits for patent infringement may, in the case of claims against the Government, be tolled up to six years between the date of receipt of a written claim for compensation by the Government and the date of mailing by the Government of a notice that the claim has been denied. Copyright infringement claims can be tolled indefinitely under 28 U.S.C. 1498(b) between the date of receipt of a written claim for compensation by the Government and the date of mailing by the Government of a notice that the claim has been denied. The proposed regulations set forth guidelines as to what NASA considers necessary to file a claim for patent or copyright infringement.

Section 1245.202(a) provides that in order for a potential claimant's communication to NASA to formally instigate a claim, it must specifically allege infringement by NASA, request compensation, identify a patent or copyright alleged to be infringed, and indicate an act or item which the potential claimant believes infringes the claimant's patent or copyright. Section 1245.203(a) advises the potential claimant where to forward communications regarding the alleged infringement. Section 1245.202(b) of the regulation identifies information which, although not necessary in order for a communication to be considered sufficient to constitute the filing of a claim, is usually necessary to process a claim and, therefore, if presented initially with the claim, may serve to expedite the handling of the claim. The proposed regulations provide for written notification to the claimant upon completion of an investigation by NASA.

Regulatory Analysis Section

Paperwork Reduction Act Statement

This rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12866 and Executive Order 13563

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 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.

Regulatory Flexibility Act

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule sets forth policies and procedures for the filing and disposition of claims of infringement of privately owned rights in patented inventions or copyrighted works asserted against NASA. These policies and procedures would not have a significant economic impact on a substantial number of small entities as NASA typically has less than 10 of such claims asserted against it annually. Any small entities that believe they are being adversely affected by this rule are encouraged to submit comments; please see information under the **DATES** and **ADDRESSES** headings above for guidance.

List of Subjects in 14 CFR Part 1245

Claims, Inventions, Patent and copyright infringement.

Accordingly, Part 1245, Subpart 2, of Title 14 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 1245—PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

Subpart 2—Claims for Patent and Copyright Infringement

Sec.
1245.200 Purpose.
1245.201 Objectives.
1245.202 Contents of communication initiating claim.
1245.203 Incomplete notice of infringement.
1245.204 Indirect notice of infringement.
1245.205 Processing of administrative claims.

Subpart 2—Claims for Patent and Copyright Infringement

Authority: 51 U.S.C. 20112–20113; 22 U.S.C. 2356; 35 U.S.C. 181–188 and 286; and 28 U.S.C. 1498.

§ 1245.200 Purpose.

The purpose of this part is to set forth policies and procedures for the filing and disposition of claims of infringement of privately owned rights in patented inventions or copyrighted works asserted against NASA.

§ 1245.201 Objectives.

Whenever a claim of infringement of privately owned rights in patented inventions or copyrighted works is asserted against NASA, all necessary steps shall be taken to investigate and to administratively settle, deny, or otherwise dispose of such claim prior to suit against the United States. The General Counsel, or designee, is authorized to investigate, settle, deny, or otherwise dispose of all claims of patent and copyright infringement, pursuant to the above-cited statutory authority.

§ 1245.202 Contents of communication initiating claim.

(a) *Requirements for claim.* A patent or copyright infringement claim for compensation, asserted against the United States as represented by NASA under any of the applicable statutes cited above, must be actually communicated to and received by an organization, office, or within a NASA Center. Claims must be in writing and must include the following:

(1) An allegation of infringement.

(2) A request for compensation, either expressed or implied.

(3) A citation to the patent(s) or copyright(s) alleged to be infringed.

(4) In the case of a patent infringement claim, a sufficient designation to permit identification of the accused subject matter (*e.g.* article(s) or process(es)) alleged to infringe the patent(s), giving the commercial designation, if known to the claimant, or, in the case of a copyright infringement claim, the accused subject matter (*e.g.* act(s) or work(s)) alleged to infringe the copyright.

(5) In the case of a patent infringement claim, a designation of at least one claim of each patent alleged to be infringed or, in the case of a copyright infringement claim, a copy of each work alleged to be infringed.

(6) As an alternative to paragraphs (a)(4) and (5) of this section, certification that the claimant has made a bona fide attempt to determine the accused subject matter, which is alleged to infringe the patent(s), or the accused subject matter alleged to infringe the copyright(s), but was unable to do so, giving reasons and stating a reasonable basis for the claimant's belief that the patent(s) or copyright(s) is being infringed.

(b) *Additional information for patent infringement claims.* In addition to the information listed in paragraph (a) of this section, the following material and information generally are necessary in the course of processing a claim of patent infringement. Claimants are encouraged to furnish this information at the time of filing a claim to permit rapid processing and resolution of the claim.

(1) A copy of the asserted patent(s) and identification of all claims of the patent(s) alleged to be infringed.

(2) Identification of all procurements known to the claimants that involve the accused item(s) or process(es), including the identity of the vendor(s) or contractor(s) and the Government acquisition activity or activities.

(3) A detailed identification and description of the accused article(s) or process(es) used or acquired by the Government, particularly where the article(s) or process(es) relate to a component(s) or subcomponent(s) of an item acquired, and an element-by-element comparison of representative claim(s) with the accused article(s) or process(es). If available, the identification and description should include documentation and drawings to illustrate the accused article(s) or process(es) in sufficient detail to enable determining whether the claim(s) of the asserted patent(s) read on the accused article(s) or process(es).

(4) Names and addresses of all past and present licensees under the patent(s) and copies of all license agreements and releases involving the patent(s). In addition, an identification of all assignees of the patent(s).

(5) A list of all persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the status or ultimate disposition of each.

(6) A brief description of all litigation involving the patent(s) which was initiated at any time prior to the claim being filed and their present status. This includes any defenses or counterclaims made and positions maintained by opposing parties regarding invalidity and/or noninfringement of the patent(s).

(7) A description of Government employment or military service, if any, by the inventor(s) or patent owner(s) including a statement from the inventor(s) or patent owner(s) certifying whether the invention claimed in the patents was conceived or reduced to practice, in part or in whole, during Government employment and whether such inventor(s) or owner(s) occupied any position from which such inventor(s) or owner(s) was capable of ordering, influencing, or inducing use of the invention by the Government.

(8) A list of all contract(s) between the Government and inventor(s), patent owner(s), or anyone in privity with the patent owner(s), under which work relating to the patented subject matter was performed.

(9) Evidence of title to the asserted patent(s) or other right to make the claim.

(10) A copy of the United States Patent and Trademark Office (USPTO) file history of each patent, if it is available to the claimant. Indicate whether the patent has been the subject of any interference proceedings, certification of correction request, reexamination, or reissue proceedings at the USPTO, or lapsed for failure to pay any maintenance fee. In addition, the status of all corresponding foreign patents and patent applications and full copies of the same.

(11) Pertinent prior art known to the claimant not contained in the USPTO file, for example, publications and foreign prior art. In addition to the foregoing, if claimant can provide a statement that the investigation may be limited to the specifically identified accused article(s) or process(es) or to a specific acquisition (*e.g.* identified contract(s)), it may speed disposition of the claim. Claimants are also encouraged to provide information on any ancillary matters that may have a bearing on validity or infringement.

(c) *Denial for refusal to provide information.* In the course of investigating a claim, it may become necessary for NASA to request information in the control and custody of the claimant that is relevant to the disposition of the claim. Failure of the claimant to respond to a request for such information shall be sufficient reason alone for denying a claim.

§ 1245.203 Incomplete notice of infringement.

(a) If a communication alleging patent infringement or copyright infringement is received that does not meet the requirements set forth in § 1245.202(a), the sender shall be advised in writing by the Agency Counsel for Intellectual Property:

(1) That the claim for infringement has not been satisfactorily presented; and

(2) Of the elements necessary to establish a claim.

(b) A communication, in which no infringement is alleged in accordance with § 1245.202(a), such as a mere proffer of a license, shall not be considered a claim for infringement.

§ 1245.204 Indirect notice of infringement.

A communication by a patent or copyright owner to addressees other than those specified in § 1245.202(a), such as NASA contractors, including contractors operating Government-owned facilities, alleging that acts of infringement have occurred in the performance of a Government contract, grant, or other arrangement, shall not be considered a claim within the meaning of § 1245.202(a) until such communication meets the requirements specified therein.

§ 1245.205 Processing of administrative claims.

(a) *Filing and forwarding of claims.* All communications regarding claims should be addressed to: Agency Counsel for Intellectual Property, Office of the General Counsel, National Aeronautics and Space Administration, Washington, DC 20546–0001. If any communication relating to a claim or possible claim of patent or copyright infringement is received by an agency, organization, office, or field installation within NASA, it shall be forwarded to the Agency Counsel for Intellectual Property.

(b) *Disposition and notification.* The General Counsel, or designee, shall investigate and administratively settle, deny, or otherwise dispose of each claim. When a claim is denied, the Agency shall so notify the claimant or the claimant's authorized representative and provide the claimant with the reasons for denying the claim. Disclosure of information shall be subject to applicable statutes, regulations, and directives pertaining to security, access to official records, and the rights of others.

(c) *Termination of claims.* If, while an administrative claim for patent or copyright infringement is pending against NASA, the claimant brings suit for patent or copyright infringement against the United States in the Court of Federal Claims based on the same facts or transactions as the administrative claim, the administrative claim shall thereupon be automatically dismissed, with no further action being required of NASA.

Charles F. Bolden, Jr.,

Administrator.

[FR Doc. 2011–18711 Filed 7–25–11; 8:45 am]

BILLING CODE 7510–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

[Docket No. CPSC–2011–0048]

Petition Requesting Non-See-Through Packaging for Torch Fuel and Lamp Oil

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Comment request.

SUMMARY: The U.S. Consumer Product Safety Commission (''Commission'' or ''we'') has received a petition (PP 11–1) requesting that the Commission initiate rulemaking to require special packaging for torch fuel and lamp oil to make it impossible to see the product when it is in the container. We invite written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by September 26, 2011.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0048, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

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

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and petition number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

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

FOR FURTHER INFORMATION CONTACT: Rochelle Hammond, Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833.

SUPPLEMENTARY INFORMATION: The Commission has received a submission from John L. Branum, Attorney at Law, on behalf of Bettsy Bumpas (''petitioner''), dated May 9, 2011, requesting that we initiate rulemaking to require torch fuel and lamp oil to be

packaged in containers that are not see-through. We are docketing this request as a petition under the Poison Prevention Packaging Act (''PPPA''). 15 U.S.C. 1471–1477.

The PPPA authorizes the Commission to issue requirements that certain household substances be sold in child-resistant containers. 15 U.S.C. 1471–1477. Child-resistant packaging requirements currently apply to torch fuel and lamp oil. (More specifically, the child-resistant packaging requirements apply to ''kindling and/or illuminating preparations,'' which includes ''cigarette lighter fuel, charcoal lighter fuel, camping equipment fuel, torch fuel, and fuel for decorative and functional lanterns, which contain 10 percent or more by weight of petroleum distillates and have a viscosity of less than 100 Saybolt universal seconds at 100° Fahrenheit.'' 16 CFR 1700.14(7)). The PPPA does not authorize the Commission to prescribe specific packaging designs for household substances. 15 U.S.C. 1472(d). However, in the case of a household substance for which special packaging, *i.e.,* child-resistant packaging, is required, the Commission may prohibit the packaging of such substance in packages which it determines are unnecessarily attractive to children. Id. Therefore, in order to issue a rule requiring that torch fuel and lamp oil not be sold in see-through containers, the Commission would need to determine that the packaging is ''unnecessarily attractive'' to children.

Petitioner asserts that certain petroleum distillates, including torch fuel and lamp oil, as currently packaged, resemble juice. Petitioner notes that because young children enjoy the taste of juice and are accustomed to drinking it regularly, packaging petroleum distillates in clear plastic bottles causes needless danger, as children may mistake it for juice.

Petitioner states that ''the New Jersey Poison Information and Education System stated in June 2008 that four people were hospitalized, one was critically ill, and one killed due to torch oil being mistaken for apple juice.'' Petitioner also states that ''from 2002 through 2009 the Annual Report of the American Association of Poison Control Centers' National Data System has chronicled the exposure of many young children to lamp oils, which includes torch fuels.'' Petitioner's son died after ingesting torch fuel from a clear plastic bottle.

While torch fuel and lamp oil are already subject to child-resistant packaging and labeling requirements under the Poison Prevention Packaging Act and the Federal Hazardous Substances Act, petitioner asserts that additional special packaging is necessary. Specifically, petitioner requests that the CPSC initiate rulemaking ''that would require manufacturers of [torch fuel and lamp oils] to package the product in containers that make it impossible to see the product when in the container.'' Petitioner notes that this could be accomplished ''by packaging the fuel in a solid container or opaque plastic child-resistant container or a metal container.''

By this notice, we seek comments concerning this petition. Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Copies of the petition are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East West Highway, Bethesda, MD, or from our Web site at: *http://www.cpsc.gov.*

Dated: July 18, 2011.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–18512 Filed 7–25–11; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release No. 34–64939; File No. 4–636]

Joint Public Roundtable on International Issues Relating to the Implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: On Monday, August 1, 2011, commencing at 9 a.m. and ending at 4 p.m., staff of Commodity Futures Trading Commission (''CFTC'') and Securities and Exchange Commission (''SEC'') (each, an ''Agency,'' and collectively, the ''Agencies'') will hold a public roundtable meeting at which invited participants will discuss various international issues related to the implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

DATES: The public roundtable meeting will be held on Monday, August 1, 2011.

ADDRESSES: The roundtable discussion will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC. The discussion will be open to the public with seating made available on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone. Call-in participants should be prepared to provide their first name, last name and affiliation. The information for the conference call is set forth below.

- U.S. toll-free: (866) 844–9416.
- International toll: (203) 369–5026.
- Passcode: 4316057.

A transcript of the public roundtable discussion will be published on the CFTC's Web site at *http://www.cftc.gov/PressRoom/Events/2011/index.htm* and on the SEC's Web site at *http://www.sec.gov/news/press/2011/2011-151.htm.*

FOR FURTHER INFORMATION CONTACT: The CFTC's Office of Public Affairs at (202) 418–5080 or the SEC's Office of Public Affairs at (202) 551–4120.

SUPPLEMENTARY INFORMATION: The roundtable discussion will take place on Monday, August 1, 2011, commencing at 9 a.m. and ending at 4 p.m. Members of the public who wish to comment on the topics addressed at the discussion, may do so via:

- Paper submission to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, or Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; or
- Electronic submission via visiting *http://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx* and submitting comments through the CFTC's Web site; and/or by e-mail to *rule-comments@sec.gov* (all e-mails must reference the file number 4–636 in the subject field) or through the comment form available at *http://www.sec.gov/news/press/2011/2011-151.htm.*

All submissions will be reviewed jointly by the Agencies. All comments must be in English or be accompanied by an English translation. All

submissions provided to either Agency in any electronic form or on paper will be published on the Web site of the respective Agency, without review and without removal of personally identifying information. Please submit only information that you wish to make publicly available.

By the Commodity Futures Trading Commission.

Dated: July 21, 2011.

David A. Stawick,

Secretary.

By the Securities and Exchange Commission.

Dated: July 21, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18889 Filed 7–25–11; 8:45 am]

BILLING CODE 6351–01–P; 8011–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release No. 34–64926; File No. 4–635]

Acceptance of Public Submissions for a Study on International Swap Regulation Mandated by Section 719(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Commodity Futures Trading Commission; Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: Section 719(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC and, together with the CFTC, the Commissions) jointly to study and then report to Congress on swap regulation and clearinghouse regulation in the United States, Asia, and Europe and to identify areas of regulation that are similar and other areas of regulation that could be harmonized. The report also must identify major dealers, exchanges, clearinghouses, clearing members, and regulators in each geographic area and describe the major contracts (including trading volumes, clearing volumes, and notional values), methods for clearing swaps, and the systems used for setting margin in each geographic area. In connection with the study and report, the CFTC and SEC are issuing this request for information through public comment.

DATES: Submit comments on or before September 26, 2011.

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

CFTC

- Agency Web site, via its Comments Online process at *http://comments.cftc.gov*. Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

Please submit comments using only one method. Comments should be identified by ''International Swap Regulation Study'' in the subject line of responses submitted electronically and in paper submissions.

All comments must be submitted in English or, if not, accompanied by an English translation. Comments will be posted on the CFTC's Internet Web site at *http://www.cftc.gov,* without review and without removal of personally identifying information. You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that may be exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments will be retained in the public comment file and may be accessible under FOIA.

SEC

Electronic Comments

- Use the agency's Internet comment form at *http://www.sec.gov/rules/other.shtml;* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–635 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–635. This file number should be included on the subject line if e-mail is used. To help the SEC process and review your comments more efficiently, please use only one method. Comments will be posted on the SEC's Internet Web site at *http://www.sec.gov*. Comments also are available for Web site viewing and printing in the SEC's Public Reference Room, Station Place, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the SEC does not edit personally identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: *CFTC:* Natalie Markman Radhakrishnan, Senior Special Counsel, 202–418–5059, *nmradhakrishnan@cftc.gov,* Office of International Affairs, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; *SEC:* Babback Sabahi, Senior Counsel, 202–551–5398, *sabahib@sec.gov,* Office of International Affairs, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1004.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act was enacted on July 21, 2010.[2] Title VII of the legislation[3] amends the Commodity Exchange Act[4] and the Securities Exchange Act of 1934[5] to establish a comprehensive new regulatory framework for swaps and security-based swaps to reduce risk, increase transparency, and promote market integrity within the financial system. Among other things, Title VII: (1) Provides for the registration and comprehensive regulation of swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants; (2) imposes clearing and trade execution

[1] CFTC regulations referred to herein are found at 17 CFR Ch. 1 (2010). They are accessible on the Commission's Web site at *http://www.cftc.gov.*

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm.*

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

[4] 7 U.S.C. 1 *et seq.*

[5] 15 U.S.C. 78a *et seq.*

requirements on swaps and security-based swaps, subject to certain exceptions; (3) creates rigorous recordkeeping and real-time reporting regimes; and (4) enhances the Commissions' rulemaking and enforcement authorities with respect to certain registered entities and intermediaries subject to the Commissions' oversight.

Section 719(c)(1) of the Dodd-Frank Act requires the CFTC and SEC jointly to conduct a study on swap regulation and clearinghouse regulation in the United States, Asia, and Europe and to identify areas of regulation that are similar and other areas of regulation that could be harmonized.[6] Pursuant to Section 719(c)(2) of the Dodd-Frank Act, the Commissions must submit a report to Congress within 18 months after the Dodd-Frank Act's enactment (*i.e.,* on or before Monday, January 23, 2012) that describes the results of the study and includes: (1) The identification of the major dealers, exchanges, clearinghouses, and regulators in each geographic area; (2) lists of the major swap contracts (including trading volumes, clearing volumes, and notional values) in each geographic area; and (3) a description of the methods for clearing swaps and the systems used for setting margin in each geographic area.[7]

II. Request for Comments

In connection with the study and report required by Section 719(c) of the Dodd-Frank Act, the CFTC and SEC have determined to issue this request for information through public comment. Congress has directed the Commissions to conduct an independent joint study on specific topics and, in particular, to identify areas of regulation that could be harmonized.[8] The Commissions have determined that this request for public comment will be an effective and transparent means of gathering information necessary for the study and report from interested parties. This public comment process will, as needed, be supplemented by other means of gathering the comprehensive range of information requested by Congress.[9]

The Commissions also are mindful of differences in regulatory development across jurisdictions. In the United States and under the Dodd-Frank Act, many of the required regulations with regard to swaps already have been proposed and made available for public comment.[10] Other jurisdictions, however, are proceeding under different time frames. For example, the Japanese Diet amended the Financial Instruments and Exchange Act by adopting legislation on over-the-counter (OTC) derivatives on July 10, 2009, and on May 12, 2010. These amendments are expected to be implemented by November 2012. The European Commission (EC), in turn, proposed legislation on clearing and trade repositories on September 15, 2010.[11] This proposed legislation calls for the European Securities and Markets Authority to propose technical standards by June 30, 2012.[12]

In order to strike a balance between meeting the statutory deadline for the study and report and providing timely information to Congress, the Commissions have determined to publish the request at this time and to provide for a 60-day comment period. Given the pace of developments in the regulation of OTC derivatives here in the United States and in other jurisdictions, the Commissions plan to conduct the study based upon information received and collected by the last day of the comment period.[13] Comments should be submitted during the open comment period, but staff may consider comments filed after the deadline and may consult with interested and/or relevant parties after the comment period closes in order to obtain additional or clarifying information. The Commissions welcome public comment on all aspects of the study.[14]

The Commissions have developed the following requests for comment to gather information in support of the study mandated by Section 719(c) and request that commenters include a description, either in English or accompanied by an English translation, of the underlying source material used in composing each submitted response. Commenters may also provide any additional relevant information beyond that specifically requested. Because

[6] Section 719(c)(1) provides:

(1) IN GENERAL.–The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly conduct a study–

(A) relating to–

(i) swap regulation in the United States, Asia, and Europe; and

(ii) clearing house and clearing agency regulation in the United States, Asia, and Europe; and

(B) that identifies areas of regulation that are similar in the United States, Asia and Europe and other areas of regulation that could be harmonized[.]

[7] Section 719(c)(2) provides:

(2) REPORT.–Not later than 18 months after the date of enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall submit to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives a report that includes a description of the results of the study under subsection (a), including–

(A) identification of the major exchanges and their regulator in each geographic area for the trading of swaps and security-based swaps including a listing of the major contracts and their trading volumes and notional values as well as identification of the major swap dealers participating in such markets;

(B) identification of the major clearing houses and clearing agencies and their regulator in each geographic area for the clearing of swaps and security-based swaps, including a listing of the major contracts and the clearing volumes and notional values as well as identification of the major clearing members of such clearing houses and clearing agencies in such markets;

(C) a description of the comparative methods of clearing swaps in the United States, Asia, and Europe; and

(D) a description of the various systems used for establishing margin on individual swaps, security-based swaps, and swap portfolios.

The provision's reference to ''subsection (a)'' presumably should be replaced with a reference to subsection (1) because no such subsection (a) applies to this study. Moreover, although Section 719(c) is entitled ''International Swap Regulation'' and does not consistently refer to both swaps and security-based swaps throughout, Congress mandated a joint study and, accordingly, the Commissions have interpreted the terms ''swap'' and ''swaps'' to include both swap(s) and security-based swap(s) in the context of this statutory provision.

[8] In addition to the study and report required by Section 719(c), Congress directed the Commissions (and prudential regulators) in Section 752(a) of the Dodd-Frank Act to ''as appropriate * * * consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps, security-based swaps, swap entities, and security-based swap entities'' in order to ''promote effective and consistent global regulation of swaps and security-based swaps''.

[9] For example, Commission staff will engage in ongoing consultation with regulatory authorities and others throughout the study.

[10] For more information, visit CFTC and SEC Web sites on implementation of the Dodd-Frank Act, respectively at *http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm* and *http://www.sec.gov/spotlight/dodd-frank.shtml.*

[11] On December 8, 2010, the EC also issued a public consultation to solicit views on revisions to the Markets in Financial Instruments Directive that are designed, among other things, to increase transparency for OTC derivatives and other instruments by setting requirements for trading venues and investment firms, and to enhance business conduct standards applicable to all investment firms. The EC is expected to publish a proposal further to this consultation during summer 2011.

[12] See various provisions of the EC's proposed European Markets Infrastructure Regulation, available at *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0484:FIN:EN:PDF.*

[13] The Commissions may, however, in their discretion and depending on the significance of the developments, decide to address certain legislative or regulatory developments that take place after the comment period has ended.

[14] In light of the statutory deadline established in Section 719(c) of the Dodd-Frank Act, the Commissions request comment on how best to ensure that the study reflects the latest state of regulatory implementation in Asia and Europe. Commenters are encouraged to submit information regarding significant relevant legislative or regulatory developments occurring after the end of the comment period and prior to the submission of the report to Congress.

Section 719(c) requires the Commissions to prepare a report relating to the swap markets of the United States, Asia, and Europe, commenters are specifically asked to provide information about markets in those jurisdictions. Commenters also may provide any relevant information on other jurisdictions. If regulatory requirements in a jurisdiction are under consideration but not yet enacted or effective, commenters should make note of this in their answer and provide as much relevant information as possible on recent and anticipated developments.

While all commenters are welcome to respond to the items below in their entirety, in order to provide more focus, the requests for comment have been divided into three groups. The first group, items A–E, inquires about information to which foreign regulators may have the most efficient access. Item F, by contrast, inquires about information that may be available to a wider range of commenters, while item G inquires about information that exchanges and clearinghouses might be uniquely positioned to provide.

A. Status of Regulation

1. For each jurisdiction on which comment is being provided, please provide the name of the jurisdiction being commented upon.

2. Does the jurisdiction have a legal definition of the term ''swap'', ''security-based swap'', or other similar term or terms (hereinafter referred to as a ''Swap'' or ''Swaps'')? If so, please provide such definition(s).[15]

3. Are Swaps included within the scope of any statute, regulation, or other legal requirement in the jurisdiction?

a. If not, is the jurisdiction planning to or considering whether to regulate, or to modify regulation of, Swaps?

b. Please further describe the present status of regulatory efforts and the anticipated timeline for such efforts.

4. What type of counterparty may enter into a Swap? Do any limitations apply?

5. Are certain types or classes of Swaps prohibited, or are certain entities prohibited from entering into certain types or classes of Swaps?

6. If Swaps are regulated:

a. Who determines which instruments, transactions, or agreements should be regulated as Swaps?

b. Which Swaps, if any, are required to be executed on an organized market, on an electronic execution facility, or on any other type of market?

c. Which Swaps, if any, are required to be cleared by a central counterparty and, for those required to be cleared, how are the trades of non-clearing participants cleared?[16]

d. Which Swap transactions, if any, are required to be reported to a data repository or other entity, the public, or regulatory authorities?

e. Is regulatory oversight of the Swap market conducted by one single regulatory authority or divided among different regulatory authorities? If the latter, please identify each relevant regulatory authority and describe its responsibilities and jurisdiction.

f. How does the regulatory framework regulate potential systemic risk created by Swaps? Does it, for example, create a new oversight body or designate certain entities as systemically important?

g. Does the regulatory authority, or regulatory authorities if more than one regulator has oversight responsibilities over the Swap market, have the ability to share information related to Swaps with domestic and foreign regulatory authorities?[17]

h. How are cross-border Swap transactions regulated? Does the Swap regulatory framework apply to persons located outside of the jurisdiction doing business with persons located within the jurisdiction, and, more generally, to cross-border Swap activities?

i. What enforcement authority exists over Swaps, and who may exercise such authority?

B. Regulatory Requirements for Market Participants

1. How does the regulatory framework address participants in the Swap market? What are the registration or licensing requirements for Swap-related dealers, market participants, intermediaries, or others (individually and collectively, ''Participants'')?

2. Are any types of Participants in the Swap market excluded or exempted from Swap-related registration or licensing requirements?

3. What is the process for updating, withdrawing, or terminating Swap-related registration or an exemption from Swap-related registration?

4. What are the Swap-related prudential regulatory requirements (*e.g.,* capital, liquidity, margin, risk management, segregation, collateral)?

5. What are the requirements related to insolvency or bankruptcy in regard to Participants?

6. What are the Swap-related business conduct requirements (*e.g.,* interaction with counterparties, disclosure, supervision, reporting, recordkeeping, documentation, confirmation, valuation, conflicts of interest, avoidance of fraud and other abusive practices)?

7. Do Participants have the ability to share information with domestic and/or foreign regulatory authorities?

8. How are foreign Participants treated (*e.g.,* a special recognition category, an exclusion or an exemption from registration)?

C. Regulatory Requirements for Organized Markets, Electronic Execution Facilities, and Other Types of Markets

1. Does the regulatory framework include requirements for organized markets, electronic execution facilities, and/or other types of markets for Swaps (hereinafter referred to as ''Markets'')?

2. What are the registration or licensing requirements for such Markets?

3. Are any Markets excluded or exempted from such registration or licensing requirements?

4. What is the process for updating, withdrawing, or terminating such registration or exempting from such registration?

5. What are the ongoing regulatory responsibilities of such Markets (*e.g.,* access, surveillance, transparency, compliance, recordkeeping)?

6. Do Markets have the ability to share information with domestic and/or foreign regulatory authorities?

7. How are foreign Markets treated (*e.g.,* a special recognition category, an exclusion or an exemption from registration)?

D. Regulatory Requirements for Central Counterparties

1. Does the regulatory framework include requirements for central counterparties that provide clearing and settlement services for Swaps?

2. What are the registration or licensing requirements for such central counterparties?

3. Who is excluded or exempted from such registration or licensing requirements?

4. What is the process for updating, withdrawing, or terminating such registration or exempting from such registration?

[15] These terms may include, but may not be limited to, OTC derivatives. The Dodd-Frank Act includes definitions of the terms ''swap'' and ''security-based swap''.

[16] If applicable, how does the mandatory clearing requirement work, *e.g.,* who decides which Swaps are required to be cleared, what criteria are applied, does the requirement apply to existing Swaps or to those entered into at a certain point in time, are any entities exempt from the clearing requirement?

[17] In particular, are there any legal or other barriers to the collection of information or to the sharing of information, *e.g.,* client confidentiality protection or data privacy safeguards?

5. What are the ongoing regulatory responsibilities of such central counterparties (*e.g.,* financial resources, risk management, safeguards against member or participant default, authority in the event of a default, recordkeeping)? [18]

6. Do such central counterparties have the ability to share information with domestic and/or foreign regulatory authorities?

7. How are foreign central counterparties treated (*e.g.,* a special recognition category, an exclusion or an exemption from registration)?

E. Regulatory Requirements for Data Repositories

1. Does the regulatory framework include requirements for data repositories for Swaps? [19]

2. What are the registration or licensing requirements for such data repositories?

3. Who is excluded or exempted from such registration or licensing requirements?

4. What is the process for updating, withdrawing, or terminating such registration or exempting from such registration?

5. What are the ongoing regulatory responsibilities of such data repositories (*e.g.,* timing of reporting to the public, recordkeeping)?

6. Are such data repositories required to use a specified data standard when they provide data to regulatory authorities and, if so, what standard is required?

7. Do such data repositories have the ability to share information with domestic and/or foreign regulatory authorities?

8. How are foreign data repositories treated (*e.g.,* a special recognition category, an exclusion or an exemption from registration)?

9. What are the regulatory requirements in connection with data reporting for entities participating in the Swap market, such as counterparties or Participants (*e.g.,* maintaining records, reporting data to a repository, real-time reporting to the public, providing information to domestic and foreign regulatory authorities)?

F. Regulatory Comparison

1. Across jurisdictions, for any or all items listed above, which areas of regulation are similar and which areas are different?

2. In viewing the existing laws, institutions, and enforcement mechanisms of each respective jurisdiction as a whole, are such similarities and differences appropriate and desirable for regulatory purposes, or do certain aspects of a particular jurisdiction's Swap market warrant a different regulatory approach?

3. What are the potential costs and benefits (in terms of investor protection, market efficiency, competition, or other factors) that may arise from further consistency/harmonization of regulations across borders?

4. How should consistency in regulation across jurisdictions be measured and are there factors other than the harmonized text of a regulation that should be taken into consideration when assessing the degree to which cross-border regulatory harmonization has been implemented in practice?

5. Assuming that a theoretically ''optimal'' set of regulations for a particular jurisdiction might take into consideration elements unique to a specific market in ways that might make cross-border harmonization difficult, to what extent do the benefits of greater regulatory harmonization across borders outweigh the costs associated with having regulations that might be less tailored to a particular market's circumstances? In what areas do you believe the benefits of harmonization most outweigh any potential downsides? [20] Are there any areas where you believe the likely benefits of ''optimal'' market-specific regulation outweigh the likely benefits of harmonization?

6. In the United States, what steps should or could be taken to better harmonize statutory requirements under the Dodd-Frank Act with statutory requirements implemented in other jurisdictions?

7. In the United States, what steps could be taken to harmonize CFTC or SEC regulations with regulations promulgated by authorities in other jurisdictions?

G. Swap Market Information

1. Please identify major organized markets and electronic execution facilities (and the Swaps-related regulator(s) for each) for the trading of Swaps.

a. For each market or facility, please provide a listing and description of the major contract classes and subclasses, such as credit default swaps (CDS),[21] equity swaps, currency swaps, interest rate swaps (IRS),[22] and commodity swaps;

b. For classes and subclasses of contracts identified in paragraph a above, please provide:

i. The trading volumes in 2009, 2010, and year-to-date; and

ii. The outstanding notional values at year-end 2008, 2009, 2010, and the most recent available.

2. Please identify major dealers participating in Swap markets (and the Swap-related regulator(s) for each).

3. Please identify major central counterparties (and the Swap-related regulator(s) for each) for the clearing of Swaps.

a. For each central counterparty, please provide a listing and description of the major classes and subclasses of cleared Swap contracts, such as CDS, equity swaps, currency swaps, IRS, and commodity swaps;

b. For classes and subclasses of contracts identified in paragraph a above, please provide:

i. The clearing volumes for 2009, 2010, and year-to-date; and

ii. The outstanding notional values at year-end 2008, 2009, 2010, and the most recent available;

c. For each central counterparty, please provide:

i. A description of the method used to clear Swaps;

ii. A description of the systems used to establish margin on individual Swaps and on Swap portfolios; and

iii. The name of each major clearing member of the central counterparty (and the Swap-related regulator(s) for each).

Issued in Washington, DC, on July 20, 2011, by the Commodity Futures Trading Commission.

David A. Stawick,

Secretary.

Issued in Washington, DC, on July 20, 2011, by the Securities and Exchange Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18763 Filed 7–25–11; 8:45 am]

BILLING CODE 8011–01–P; 6351–01–P

[18] The Recommendations for Central Counterparties were published in November 2004 (and currently are being revised) by the Committee on Payment & Settlement Systems of the Bank for International Settlements and the Technical Committee of IOSCO. Links to this standard, as well as related standards and the consultative report for revising them, are available at *http://www.bis.org/publ/cpss94.htm.*

[19] If entities other than data repositories can fulfill this function, please describe the jurisdiction's requirements for such activity and provide the relevant information for each question on this topic.

[20] In particular, please identify any potential opportunities for regulatory arbitrage or impediments to the achievement of consistent regulatory standards across jurisdictions.

[21] For CDS, include: corporate single name, sovereign single name, multi-name, index; CDS on domestic and non-domestic reference assets (classified by country, in the latter case); and CDS between domestic and non-domestic participants (classified by country, in the latter case).

[22] For IRS, include: underlying currency, structure, and maturity.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 46, 160, and 164

Food and Drug Administration

21 CFR Parts 50 and 56

Human Subjects Research Protections: Enhancing Protections for Research Subjects and Reducing Burden, Delay, and Ambiguity for Investigators

AGENCIES: The Office of the Secretary, HHS, and the Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of the Secretary of the Department of Health and Human Services (HHS) in coordination with the Office of Science and Technology Policy (OSTP) is issuing this advance notice of proposed rulemaking (ANPRM) to request comment on how current regulations for protecting human subjects who participate in research might be modernized and revised to be more effective. This ANPRM seeks comment on how to better protect human subjects who are involved in research, while facilitating valuable research and reducing burden, delay, and ambiguity for investigators.

The current regulations governing human subjects research were developed years ago when research was predominantly conducted at universities, colleges, and medical institutions, and each study generally took place at only a single site. Although the regulations have been amended over the years, they have not kept pace with the evolving human research enterprise, the proliferation of multi-site clinical trials and observational studies, the expansion of health services research, research in the social and behavioral sciences, and research involving databases, the Internet, and biological specimen repositories, and the use of advanced technologies, such as genomics. Revisions to the current human subjects regulations are being considered because OSTP and HHS believe these changes would strengthen protections for research subjects.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on September 26, 2011.

ADDRESSES: You may submit comments, identified by docket ID number HHS–OPHS–2011–0005, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Enter the above docket ID number in the ''Enter Keyword or ID'' field and click on ''Search.'' On the next Web page, click on ''Submit a Comment'' action and follow the instructions.
- *Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions] to:* Jerry Menikoff, M.D., J.D., OHRP, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.

Comments received, including any personal information, will be posted without change to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jerry Menikoff, M.D., J.D., Office for Human Research Protections (OHRP), Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; telephone: 240–453–6900 or 1–866–447–4777; facsimile: 301–402–2071; e-mail: *jerry.menikoff@hhs.gov*.

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I. Background

U.S. Federal regulations governing the protection of human subjects in research have been in existence for more than three decades. Twenty years have passed since the ''Common Rule,'' (codified at Subpart A of 45 CFR part 46) was adopted by 15 U.S. Federal departments and agencies in an effort to promote uniformity, understanding, and compliance with human subject protections.[1]

Existing regulations governing the protection of human subjects in Food and Drug Administration (FDA)-regulated research (21 CFR parts 50, 56, 312, and 812) are separate from the Common Rule but include similar requirements.

The history of contemporary human subjects protections began in 1947 with the Nuremberg Code, developed for the Nuremberg Military Tribunal as standards by which to judge the human experimentation conducted by the Nazis. The Code captures many of what are now taken to be the basic principles governing the ethical conduct of research involving human subjects.

Similar recommendations were made by the World Medical Association in its Declaration of Helsinki: Recommendations Guiding Medical Doctors in Biomedical Research Involving Human Subjects, first adopted in 1964 and subsequently revised many times.

Basic regulations governing the protection of human subjects in research supported or conducted by HHS (then the Department of Health, Education and Welfare) were first published in 1974. In the United States, a series of highly publicized abuses in research led to the enactment of the 1974 National Research Act (Pub. L. 93–348), which created the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (National Commission). One of the charges to the National Commission was to identify the basic ethical principles that should underlie the conduct of biomedical and behavioral research involving human subjects and to develop guidelines to assure that such research is conducted in accordance with those principles. In 1979, the National Commission published ''Ethical Principles and Guidelines for the Protection of Human Subjects of Research,'' also known as the Belmont Report (*http://www.hhs.gov/ohrp/policy/belmont.html*) which identified three fundamental ethical principles for all human subjects research—respect for persons, beneficence, and justice.

Based on the Belmont Report and other work of the National Commission, HHS revised and expanded its regulations for the protection of human subjects in the late 1970s and early 1980s. The HHS regulations are codified at 45 CFR part 46, subparts A through E. The statutory authority for the HHS regulations derives from 5 U.S.C. 301; 42 U.S.C. 300v–1(b); and 42 U.S.C. 289.

In 1991, 14 other Federal departments and agencies joined HHS in adopting a uniform set of rules for the protection of human subjects, the ''Common Rule,'' identical to subpart A of 45 CFR part 46 of the HHS regulations.

The Common Rule requires that Federally funded investigators in most instances obtain and document the informed consent of research subjects, and describes requirements for institutional review board (IRB) membership, function, operations, research review, and recordkeeping. The regulations also delineate criteria for, and levels of, IRB review. Currently, except for human subjects research that

is determined to be exempt from the regulations, Federally funded research involving human subjects is reviewed by an IRB in one of two ways: (1) By a convened IRB, or (2) through an expedited review process.

Since the Common Rule was developed, the landscape of research activities has changed dramatically, accompanied by a marked increase in the volume of research. It is estimated that total spending on health-related research and development by the drug industry and the Federal government has tripled since 1990.[2] While traditional biomedical research conducted in academic medical centers continues to flourish, many studies are now also conducted at community hospitals, outpatient clinics, or physician-based practices. Clinical research is regularly conducted at multiple institutions across the U.S. and other countries. Recruitment firms, bioinformatics specialists, clinical trial coordinating centers, protocol developers, data analysts, contract research organizations (CROs), data and safety monitoring committees, community-based organizations, and other entities have joined investigators and sponsors as part of the clinical research enterprise.

Research has also increased, evolved, and diversified in other areas, such as national security, crime and crime prevention, economics, education, and the environment, using a wide array of methodologies in the social sciences and multidisciplinary studies. The application of technologies such as functional magnetic resonance imaging in neuroscience has led to substantial advances in the understanding of human physiology, cognition, and behavior. The advent of sophisticated computer software programs, the Internet, and mobile technology have created new areas of research activity, particularly within the social and behavioral sciences, exponentially increasing the amount of information available to researchers, while providing the means to access and analyze that information. In many areas of society, researchers are being called upon to provide evidence to more effectively guide social policy and practices.

The rapid growth and expansion of human subjects research has led to many questions about whether the current regulatory framework is adequate and appropriate for the protection of human subjects in the 21st century. Furthermore, decades of experience have revealed a great deal about the functioning—and limitations—of existing regulations, and prompted critical evaluations by the Institute of Medicine (IOM),[3 4] the U.S. Government Accountability Office,[5 6 7] and many scholars.[8 9 10] Federal consideration of such revisions to the regulatory schema, in addition to the issues that suggest a need for revision, is not without precedent. In its 2001 concluding report, the National Bioethics Advisory Commission (NBAC) made 30 recommendations that addressed areas including the scope and structure of the oversight system, the level of review applied to research, emphasizing the informed consent process, documentation and waiver of informed consent, protecting privacy and confidentiality, adverse event reporting, and review of cooperative or multi-site research studies.[11] NBAC's recommendations are one source for the revisions in the Common Rule currently being considered. Addressing these considerations now is timely and consistent with the President's Executive Order requiring Federal agencies to review existing significant regulations to determine whether they should be modified, streamlined, expanded, or repealed to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objective.[12]

The concerns about the current Common Rule can roughly be categorized into seven areas. First, the system has been criticized as not adequately calibrating the review process to the risk of research. Critics have raised concerns that some IRBs spend considerable time reviewing minimal risk research, and that some IRBs have a tendency to overestimate the magnitude and probability of reasonably foreseeable risks.[13] Because significantly more research studies require convened IRB review, this greater IRB workload diverts time and resources from review of research that poses greater risks, theoretically resulting in inadequate attention to research that could seriously harm subjects.[14]

Questions have been raised about the appropriateness of the review process for social and behavioral research.[15 16 17 18] The nature of the possible risks to subjects is often significantly different in many social and behavioral research studies as compared to biomedical research, and critics contend that the difference is not adequately reflected in the current rules. While physical risks generally are the greatest concern in biomedical research, social and behavioral studies rarely pose physical risk but may pose psychological or informational risks. Some have argued that, particularly given the paucity of information suggesting significant risks to subjects in certain types of survey and interview-based research, the current system over-regulates such research.[19 20 21] Further, many critics see little evidence that most IRB review of social and behavioral research effectively does much to protect research subjects from psychological or informational risks.[22] Over-regulating social and behavioral research in general may serve to distract attention from attempts to identify those social and behavioral research studies that do pose threats to the welfare of subjects and thus do merit significant oversight.

Second, critics have commented about the inefficiencies of review by multiple IRBs for multi-site studies, which add bureaucratic complexity to the review process and delay initiation of research projects without evidence that multiple reviews provide additional protections to subjects.[23] There also has been a concern that the current multiple review system might actually be leading to weaker protections for subjects than if there were fewer reviews but greater responsibility on the part of the IRBs involved.

Third, questions have been raised about the extent and quality of the protections afforded by current informed consent requirements and practices. A variety of critics have highlighted problems with consent forms. In some research studies, consent forms have become lengthy and are often written in highly technical terms.[24 25 26] Many also claim that consent forms have evolved to protect institutions rather than to actually provide salient information to potential human subjects.[27] This is especially problematic if the forms fail to include information that is crucial for making a decision about participation, including appropriate information about financial relationships between researchers and study sponsors, or are written in a way that potential subjects are likely to fail to notice such information. At the same time, others raise concerns about the rigid application of written consent to all forms of research, especially research involving surveys, interviews, focus groups, or other similar methodologies.[28] In these types of research, it has been argued that written documentation of consent is unnecessary and that answering questions should be sufficient to indicate individual consent to participate.[29]

Fourth, increasing use of genetic information, existing (*i.e.*, stored) biospecimens, medical records, and administrative claims data in research has changed the nature of the risks and

benefits of research participation. Risks related to these types of research are not physical but informational (*e.g.*, resulting from the unauthorized release of information about subjects). The Privacy Rule promulgated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)[30] addresses some of these informational risks by imposing restrictions on how certain identifiable health information collected by health plans, healthcare clearinghouses, and certain healthcare providers (''covered entities'') may be used and disclosed, including for research. In addition, the HIPAA Security Rule requires that these entities implement certain administrative, physical, and technical safeguards to protect this information when in electronic form from unauthorized use or disclosure. However, the HIPAA Rules apply only to covered entities (and in certain respects to their business associates), and not all investigators are part of a covered entity (or business associates of a covered entity). Separate from the HIPAA Rules, the Privacy Act of 1974, as amended (5 U.S.C. 552a[31]) requires Federal agencies to protect personally identifiable information in their possession and control. However, it does not apply to non-Federal researchers.

Fifth, the monitoring and evaluation of the current system for protecting human subjects has been criticized.[32] There is concern that current regulations do not provide an ideal mechanism for the collection of information that would allow evaluation of the effectiveness of the research oversight system in protecting human subjects.

Sixth, concerns have been expressed that the current regulatory system does not adequately protect all research subjects.[33] For instance, only some research studies funded by certain Federal agencies or those that involve the development of products subject to regulation by the FDA, are subject to the Common Rule or similar protections. As a result, there are many studies that are not subject to any such Federal oversight, even though they may involve substantial risks to the subjects.

Seventh, the multiple, differing regulatory requirements that can apply to a single research study have been criticized as complex, inconsistent, and lacking in clarity, which results in unwarranted variability across institutions and their IRBs in how the requirements are interpreted and implemented.[34] For example, Federal agencies that have adopted the Common Rule have issued guidance and developed norms of implementation that sometimes differ and may, in certain instances, even conflict with guidance from other Common Rule agencies. Similarly, the overlapping and sometimes, arguably, inconsistent requirements of the Common Rule and the HIPAA Privacy Rule have been criticized as being overly complex, causing confusion and frustration among investigators, IRBs, and others trying to comply with both sets of requirements.[35]

In response to these various criticisms, we propose changes to the following seven aspects of the current regulatory framework. The fundamental goal is to enhance the effectiveness of the research oversight system by improving the protections for human subjects while also reducing burdens, delays, and ambiguity for investigators and research subjects.

1. Refinement of the existing risk-based regulatory framework (Section II);
2. Utilization of a single IRB review of record for domestic sites of multi-site studies (Section III);
3. Improvement of consent forms and the consent process (Section IV);
4. Establishment of mandatory data security and information protection standards for all studies that involve identifiable or potentially identifiable data (Section V);
5. Establishment of an improved, more systematic approach for the collection and analysis of data on unanticipated problems and adverse events (Section VI);
6. Extension of Federal regulatory protections to all research, regardless of funding source, conducted at institutions in the U.S. that receive some Federal funding from a Common Rule agency for research with human subjects (Section VII); and
7. Improvement in the harmonization of regulations and related agency guidance (Section VIII).

We believe the proposals we are considering uphold and better reflect the ethical principles upon which the Common Rule is based. We recognize that this ANPRM is both lengthy and detailed. However this level of detail reflects the importance and types of changes that have been proposed by the Institute of Medicine (IOM), NBAC, and other commentators and are now being considered for adoption. Comment is now sought on these proposals and on the broader question of how to modernize, simplify, and enhance the current system. The intent is to revise the Common Rule[36] recognizing that other laws and regulations, such as the other subparts of the HHS human subjects protection regulations (Subparts B, C, and D, which deal with particular populations of vulnerable subjects, and Subpart E of 45 CFR part 46), FDA regulations, and the HIPAA Privacy Rule most likely will be affected and will need to be harmonized, as appropriate, with any proposed regulatory changes made to the Common Rule.

As we consider how the current regulations governing human subjects research should be revised, we will take into account the deliberations of the Presidential Commission for the Study of Bioethical Issues. We will also consider the public comments received on the request for information that the Commission issued on March 2, 2011, that sought public comment on the current Federal and international standards for protecting the health and well-being of participants in scientific studies supported by the Federal Government.[37]

II. Ensuring Risk-Based Protections

Currently, the Common Rule provides for several tiers of independent review of research studies, as follows:

1. The highest level of review, applied to most studies involving more than minimal risk and to many studies involving no more than minimal risk, is review by a convened IRB.
2. The next level of review is *expedited* review.[38] This generally involves review by a single IRB member. A study is eligible for expedited review if the research appears on a list published by the Secretary of HHS of categories of research eligible for such review, and the research is found by the reviewer(s) to involve no more than minimal risk.
3. Certain studies are *exempt* from IRB review.[39] The regulations specify six ''exemption'' categories; a study must fall within one or more of these six categories to be exempted from IRB review altogether. Although these studies are not subject to the Common Rule, and no review is actually required, guidance issued by the Office for Human Research Protection (OHRP) recommends that there be some type of review by someone other than the investigator to confirm that the study qualifies as exempt, and many institutions do indeed impose such a requirement.[40]

There has been criticism about this regulatory framework for reviewing research studies. Although it does attempt to match the level of review to the type of risks posed by a study, many argue that it does so in a less than ideal manner. For instance, many surveys that are unlikely to lead to any harm to subjects nonetheless undergo review by a convened IRB.[41] Further, arguments

have been made that some of the lines drawn between review categories are vague and difficult to apply.[42] Studies have shown that different levels of review are sometimes required by different IRBs for the same study.[43 44]

In response to these concerns, the IOM report on research protections recommended revising the current approach: ''The degree of scrutiny, the extent of continuing oversight, and the safety monitoring procedures for research proposals should be calibrated to a study's degree of risk. Minimal risk studies should be handled diligently, but expeditiously, while studies involving high risk should receive the extra time and attention they require.'' [45] The IOM surmised that this would reduce burdens that do not translate into meaningful protections of human subjects and would limit unnecessary drain on resources, enabling IRBs to give more attention to high risk studies and critical protection activities while improving the efficiency with which research projects are reviewed and overseen.

This ANPRM describes potential refinements to the current review framework intended to ensure that protections are commensurate with the level of risk of the research study. Five of the most significant changes being considered are summarized below, followed by a more detailed explanation of the proposals:

1. Establishing mandatory data security and information protection standards for identifiable information and rules protecting against the inappropriate re-identification of de-identified information that is collected or generated as part of a research study to minimize informational risks and thereby eliminate the need for IRBs to review informational risks of the research. For purposes of the Common Rule, we are considering adopting the HIPAA standards regarding what constitutes individually identifiable information, a limited data set, and de-identified information, in order to harmonize these definitions and concepts. Since this provision would cover studies currently considered ''exempt'' from the current regulations, a change in terminology would need to be considered (see Section B(3), below).

2. Revising the rules for continuing review. Continuing review would be eliminated for all minimal risk studies that undergo expedited review, unless the reviewer explicitly justifies why continuing review would enhance protection of research subjects. For studies initially reviewed by a convened IRB, continuing review would not be required, unless specifically mandated by the IRB, after the study reaches the stage where procedures are limited to either (i) analyzing data (even if it is identifiable), or (ii) accessing follow-up clinical data from procedures that subjects would undergo as part of standard care for their medical condition or disease (such as periodic CT scans to monitor whether the subjects' cancers have recurred or progressed).

3. Revising the regulations regarding expedited review to provide for mandatory regular updating of the list of categories of research that may be reviewed under this mechanism, creating a presumption that studies utilizing only research activities that appear on that list are indeed minimal risk, and providing for streamlined document submission requirements for review.

4. Revising the regulations regarding studies currently considered exempt to, among other things:

i. Require that researchers file with the IRB a brief form (approximately one page) to register their exempt studies, but generally allow the research to commence after the filing;

ii. Clarify that routine review by an IRB staff member or some other person of such minimal risk exempt studies is neither required nor even recommended;

iii. Expand the current category 2 exemption (45 CFR 46.101(b)(2)) to include all studies involving educational tests, surveys, interviews, and similar procedures so long as the subjects are competent adults, without any further qualifications (but subject to the data security and information protection standards discussed above);

iv. Add a new category for certain types of behavioral and social science research that goes beyond using only survey methodology, but nonetheless involves only specified minimal risk procedures, so long as the subjects are competent adults (but subject to the data security and information protection standards discussed above);

v. Expand the current category 4 exemption (regarding the collection or study of existing data, documents, records and biospecimens) (45 CFR 46.101(b)(4)) to include all secondary research use of identifiable data and biospecimens that have been collected for purposes other than the currently proposed research, provided that specified new consent requirements are satisfied. This expanded category 4 exemption would apply to the secondary use of identifiable data and biospecimens even if such data or biospecimens have not yet been collected at the time of the research proposal, and even if identifiers are retained by the researcher (instead of requiring at least expedited review, as is currently the case); and

vi. Require random retrospective audits of a sample of exempt studies to assess whether the exemptions were being appropriately applied.

5. Generally requiring written consent for research use of any biospecimens collected for clinical purposes after the effective date of the new rules (such as research with excess pathological specimens). Such consent could be obtained by use of a brief standard consent form agreeing to generally permit future research. This brief consent could be broad enough to cover all biospecimens to be collected related to a particular set of encounters with an institution (*e.g.* hospitalization) or even to any biospecimens to be collected at any time by that institution. These studies using biospecimens collected for clinical purposes would also fall under the expanded and revised exempt categories described in (4), above, and thus would not require IRB review or any routine administrative review but would be subject to the data security and information protection standards discussed above. This change would conform the rules for research use of clinically-collected biospecimens with the rules for biospecimens collected for research purposes. The general rule would be that a person needs to give consent, in writing, for research use of their biospecimens, though that consent need not be study-specific, and could cover open-ended future research.

Each of these five proposals and other proposed changes are discussed below. We seek comments and recommendations on the specific changes being considered.

A. A New Mechanism for Protecting Subjects From Informational Risks

Most research risks to the individual can be categorized into one of three types: physical, psychological, and informational risks. (Although there are other harms, such as legal, social, and economic harms, these can usually be viewed as variations on those core categories.) Physical risks are the most straightforward to understand—they are characterized by short term or long term damage to the body such as pain, bruising, infection, worsening current disease states, long-term symptoms, or even death. Psychological risks can include unintentional anxiety and stress including feelings of sadness or even depression, feelings of betrayal, and exacerbation of underlying psychiatric conditions such as post traumatic stress disorder. Psychological risks are not

necessarily restricted to psychiatric or social and behavioral research.

Informational risks derive from inappropriate use or disclosure of information, which could be harmful to the study subjects or groups. For instance, disclosure of illegal behavior, substance abuse, or chronic illness might jeopardize current or future employment, or cause emotional or social harm. In general, informational risks are correlated with the nature of the information and the degree of identifiability of the information. The majority of unauthorized disclosures of identifiable health information from investigators occur due to inadequate data security.[46]

Currently, IRBs evaluate all three categories of risk. IRB review or oversight of research posing informational risks may not be the best way to minimize the informational risks associated with data on human subjects. It is not clear that members have appropriate expertise regarding data protections. The current assumption that IRBs are responsible for reviewing and adequately addressing informational risks appears to lead to inconsistent protections and some cases in which there are inadequate protections for the information.[47] Furthermore, review of informational risk is an inefficient use of an IRB's time. Standardized data protections, rather than IRB review, may be a more effective way to minimize informational risks.

Accordingly, we are considering mandatory standards for data security and information protection whenever data are collected, generated, stored, or used. The level of protection required by these standards would be calibrated to the level of identifiability of the information, which would be based on the standards of identifiability under the HIPAA Privacy Rule. (These standards are discussed in detail in Section V.) With these standards in place to minimize the inappropriate use or disclosure of research information, the criteria for IRB approval of studies would be modified so that an IRB would no longer be responsible for assessing the adequacy of a study's procedures for protecting against informational risks. This change would not alter the IRB's role in assuring that the ethical principles of respect for persons, beneficence and justice are adequately fulfilled.

B. Calibrating the Levels of Review to the Level of Risk

To improve the link between the type of review and the level of risk posed by research studies, we are considering the changes described below. Since there would be new mandatory standards for data security and information protection to address informational risks, only non-informational risks would be considered in determining the level of risk posed by research studies.

1. Full Convened IRB Review

The requirement that research involving greater than minimal risk be reviewed by a convened IRB would not be changed from the current system. Other changes considered in this ANPRM, such as improvements in the ability of IRBs to require better consent forms, may enhance the effectiveness of such review.

With regard to continuing review of such studies, we are considering one change. Where the remaining activities in a study are limited to either (i) data analysis (even if identifiers are retained) or (ii) accessing follow-up clinical data from procedures that subjects would undergo as part of standard care for their medical problems (such as periodic CT scans to monitor whether the subjects' cancers have recurred or progressed), the default would be that no continuing review by an IRB would be required. The IRB would have the option to make a determination that overrides this default. Researchers would still have the current obligations to report various developments (such as unanticipated problems, or proposed changes to the study) to the IRB. This would be a change from the current rules, which require at least expedited IRB review of the activities described in (i) and (ii) directly above. By eliminating the requirement for continuing review of these activities, this change would allow for more effective use of IRBs' time by enabling the IRB to focus on reviewing information that is necessary to ensure protections of research subjects.

2. Revise Approach to Expedited Review

Under the Common Rule, a new research study can receive expedited review if the research activities to be conducted appear on the list of activities published by the Secretary of HHS that are eligible for such review (*http://www.hhs.gov/ohrp/policy/expedited98.html*), and is found by the reviewer(s) to involve no more than minimal risk. For research that will receive expedited review, three changes are being considered: (1) Revising the criteria that make research studies eligible for expedited review, (2) eliminating the requirement of routine annual continuing review of expedited studies, and (3) streamlining submission requirements.

(a) Eligibility for Expedited Review

Currently, a reviewer must determine that the study includes only research activities that appear in the list promulgated by the Secretary as eligible for expedited review, that the study as a whole involves no more than minimal risk, and that all of the criteria listed in 45 CFR 46.111 are met. We are considering changes in each of these three areas:

i. List of Research Activities That Qualify a Study for Expedited Review

We are considering initially updating the current list of research activities, which was last updated in 1998. We also are considering mandating that a standing Federal panel periodically (such as every year or every two years) review and update the list, based on a systematic, empirical assessment of the levels of risk. This would provide greater clarity about what would be considered to constitute minimal risk, and create a process that allows for routinely reassessing and updating the list of research activities that would qualify as minimal risk.

ii. Determination That the Study Involves No More Than Minimal Risk

As noted, currently a study can undergo expedited review if all of the activities involved appear on the list of eligible research activities and the study is found to be minimal risk. The current definition of minimal risk encompasses research activities where ''the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.''[48] Since the listed activities are ones with which there is a great deal of experience, and their risks are well known, it should be a rare instance in which a study that uses only the listed activities will, as a whole, pose more than minimal risk. Yet many studies which use only those activities—particularly those in the social and behavioral field—are frequently required to undergo review by a convened IRB.[49] We are accordingly considering providing a default presumption in the regulations that a study which includes only activities on the list is a minimal risk study and should receive expedited review. A reviewer would have the option of determining that the study should be reviewed by a convened IRB, when that

conclusion is supported by the specific circumstances of the study.

iii. Determination That the Study Meets All of the 45 CFR 46.111 Criteria

Given that a study is eligible for expedited review only if it involves minimal risk, and only if its activities are limited to those that appear on the published list, it is not clear that the study should be required to meet all of the criteria for IRB approval at 45 CFR 46.111. Currently, before an IRB may approve a research study, including research that is being reviewed under an expedited procedure, the IRB must find that the following criteria have been satisfied as required by 45 CFR 46.111:

1. Risks to subjects are minimized: (i) By using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

2. Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

3. Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

4. Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by § 46.116.

5. Informed consent will be appropriately documented, in accordance with, and to the extent required by § 46.117.

6. When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

7. When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

8. When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

Accordingly, we are considering whether all of those criteria should still be required for approval of studies that qualify for expedited review, and if not, which ones should not be required.

(b) Eliminating Continuing Review of Expedited Studies

We believe that annual continuing review of research studies involving only activities that are already well-documented to generally involve no more than minimal risk may provide little if any added protection to subjects, and that it may be preferable for IRB resources to be devoted to research that poses greater than minimal risk.

Accordingly, we are considering changing the default to require no continuing review for studies that qualify for expedited review. Researchers would still be obligated to obtain IRB approval for changes to a study and to report to the IRB unanticipated problems and other similar items that are currently required to be reported.

For any specific study, the reviewer would have the authority to make a specific determination and provide a justification about why continuing review is appropriate for that minimal risk study, and to specify how frequently such review would be required.

(c) Streamlining Documentation Requirements for Expedited Studies

Under the current Federal regulations, researchers typically must submit the same documents including a detailed protocol, informed consent documents, and any other supporting documents, regardless of whether the study will be reviewed by a convened IRB or be approved by the expedited review process. Although it is important to document why research qualifies for expedited review, it is unclear whether the time and effort expended in such preparation activities result in increased benefit in terms of protecting subjects.

Ideally, standard templates for protocols and consent forms and sample versions of those documents that are specifically designed for use in the most common types of studies would facilitate expedited review. Such forms would need to be carefully designed to eliminate those elements that are of relevance only in studies that pose greater than minimal risks and to substantially reduce the current burden of researchers involved in producing these documents and of the IRB members who review them.

Comments and recommendations are requested on any of the above proposals under consideration and on the following specific questions:

Question 1: Is the current definition of ''minimal risk'' in the regulations (45 CFR 46.102(i)—research activities where ''the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests'')—appropriate? If not, how should it be changed?

Question 2: Would the proposals regarding continuing review for research that poses no more than minimal risk and qualifies for expedited review assure that subjects are adequately protected? What specific criteria should be used by IRBs in determining that a study that qualifies for expedited initial review should undergo continuing review?

Question 3: For research that poses greater than minimal risk, should annual continuing review be required if the remaining study activities only include those that could have been approved under expedited review or would fall under the revised exempt (Excused) category described in section 3, below (*e.g.,* a study in which a physical intervention occurred in the first year, all subjects have completed that intervention, and only annual written surveys are completed for the next five years)?

Question 4: Should the regulations be changed to indicate that IRBs should only consider ''reasonably foreseeable risks or discomforts''?

Question 5: What criteria can or should be used to determine with specificity whether a study's psychological risks or other nonphysical, non-information risks, are greater than or less than minimal?

Question 6: Are there survey instruments or specific types of questions that should be classified as greater than minimal risk? How should the characteristics of the study population (*e.g.* mental health patients) be taken into consideration in the risk assessment?

Question 7: What research activities, if any, should be added to the published

list of activities that can be used in a study that qualifies for expedited review? Should any of the existing activities on that list be removed or revised? For instance, should the following be included as minimal risk research activities:

- Allergy skin testing.
- Skin punch biopsy (limited to two per protocol).
- Additional biopsy during a clinical test (*e.g.,* performing an extra colonic biopsy in the course of performing a routine colonoscopy).
- Glucose tolerance testing among adults.

Question 8: Should some threshold for radiological exams performed for research purposes, that is calibrated to this background level of exposure, be identified as involving no more than minimal risk?

Question 9: How frequently should a mandatory review and update of the list of research activities that can qualify for expedited review take place? Should the list be revised once a year, every two years, or less frequently?

Question 10: Which, if any, of the current criteria for IRB approval under 45 CFR 46.111 should not apply to a study that qualifies for expedited review?

Question 11: What are the advantages of requiring that expedited review be conducted by an IRB member? Would it be appropriate to instead allow such review to be done by an appropriately trained individual, such as the manager of the IRB office, who need not be a member of the IRB? If not, what are the disadvantages of relying on a non-IRB member to conduct expedited review? If so, what would qualify as being ''appropriately trained''? Would the effort to make sure that such persons are appropriately trained outweigh the benefits from making this change?

Question 12: Are there other specific changes that could be made to reduce the burden imposed on researchers and their staffs in terms of meeting the requirements to submit documents to an IRB, without decreasing protections to subjects? Are there specific elements that can be appropriately eliminated from protocols or consent forms? Which other documents that are currently required to be submitted to IRBs can be shortened or perhaps appropriately eliminated? Conversely, are there specific additions to protocols or consent forms beyond those identified in this notice that would meaningfully add to the protection of subjects? What entity or organization should develop and disseminate such standardized document formats?

Question 13: Given the problems with the current system regarding wide variations in the substance of IRB reviews, would it be appropriate to require IRBs to submit periodic reports to OHRP in the instances in which they choose to override the defaults described in Sections B(1), B(2)(a)(ii), and B(2)(b) above? Should IRBs have to report instances in which they require continuing review or convened IRB review of a study which involves only activities identified as being on the list of those eligible for expedited review? If an IRB that chose to override these defaults was required to submit a report to OHRP, would this provide useful information about any lack of appropriate consistency among IRBs so that clarifying guidance could be provided as needed, or provide useful information to OHRP about the possible need to revise the expedited review list or the continuing review requirements?

3. Moving Away From the Concept of Exempt

We are considering revising the category of exempt research in ways that would both increase protections and broaden the types of studies covered. Specifically, although still not subject to IRB review, these studies would be subject to the new data security and information protection standards described in Section V, and in some cases, informed consent would be required as described in Section (c) below. Given that these studies would no longer be fully exempt from the regulations, they could more accurately be described as ''Excused'' from being required to undergo some form of IRB review (which terminology we will use hereafter in this ANPRM). (**Note:** FDA's statute requires IRB review and approval of any clinical device investigation. 21 U.S.C. 360j(g)(3)(A) and (B). Therefore, FDA-regulated studies involving specimens will not be eligible for the new Excused category and will remain subject to IRB oversight.) The new data security and information protection standards make it possible to increase the coverage of the Excused category, thereby reducing the burden on researchers conducting minimal risk studies, while actually increasing the protections for participants.

Some specific aspects of these changes are described here:

(a) Types of Research Studies That Qualify for the Excused Category

The existing six exemption categories would be retained as part of the new Excused category. The current criteria for defining those categories would be reviewed and revised appropriately so that they are clear enough that researchers could readily determine whether a study qualified to be in these categories. In addition, the following significant expansions of the current categories are being considered:

1. Limitations specified in the current exempt category 2 (research involving educational tests, surveys, focus groups, interviews, and similar procedures) would no longer be necessary when these studies are conducted with competent adults. The current exemption 2 under 45 CFR 46.101(b)(2) states: ''Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (i) Information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.'' Specifically it is proposed that the language that appears after the word ''unless'' in provisions (i) and (ii) would be deleted. Thus, research conducted with competent adults, that involve educational tests, surveys, focus groups, interviews, and similar procedures would qualify for the new Excused category, regardless of the nature of the information being collected, and regardless of whether data is recorded in such a manner that subjects can be identified. It is proposed that the limitations on the current category 2 be eliminated since these studies would be conducted with competent adults and because these studies would now be subject to standard data security and information protection standards. The term ''competent'' as used here and throughout this ANPRM refers to adults who would be able to provide ''legally effective informed consent,'' as currently required by 45 CFR 46.116. This concept has been included in the Common Rule for decades, and is routinely implemented by researchers, generally with little difficulty. For example, researchers who currently conduct non-exempt surveys must make determinations regarding which subjects to include in their studies, and we are not aware of any evidence that suggests making such determinations has been a problem.

2. We are considering whether to include on the list of Excused studies certain types of social and behavioral research, conducted with competent

adults, that would involve specified types of benign interventions beyond educational tests, surveys, focus groups, interviews, and similar procedures, that are commonly used in social and behavioral research, that are known to involve virtually no risk to subjects, and for which prior review does little to increase protections to subjects. These would be methodologies which are very familiar to people in everyday life and in which verbal or similar responses would be the research data being collected. For example, a researcher might ask subjects to watch a video, or read a paragraph or solve puzzles, and then ask them some questions to elicit word associations or time performance of activities. The specific methodologies might be spelled out in regulations, or they might be promulgated via a periodic mechanism to announce and update lists similar to the list that is published for activities that allow a study to be expedited.

3. Limitations specified in the current exempt category 4 (research involving the use of existing information or biospecimens) would be eliminated. The current exemption 4 under 45 CFR 46.101(b)(4) states: ''Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.'' Specifically, it is proposed that the category would be revised to clarify that the word ''existing'' means collected for purposes other than the proposed research and not that all of the data or biospecimens need exist at the time the study commenced. In addition, the limitation that the researcher cannot record and retain information that identifies the subjects would be eliminated. In other words, research that only involves the use of data or biospecimens collected for other purposes, even if the researcher intends to retain identifiers, would now come within the new Excused category, unless there are plans to provide individual results back to the subjects. Studies that include a plan to provide to subjects individual results from the analysis of their biospecimens or data would not qualify for this proposed Excused category.

As described below in Section (c), it is contemplated that certain relatively flexible consent requirements would be imposed on some of these studies. (See Table 1 at the end of Section V for a summary of this proposal.)

(b) Tracking and Auditing Excused Research

We are considering a mechanism to track Excused research, and to audit only a small but appropriate portion of such research, because it would still be subject to other regulatory protections, such as the proposed data security and information protection standards and certain consent requirements. In addition, such a mechanism to track and audit Excused research will also enable institutions to assure that the research does indeed meet the criteria for inclusion in the Excused category. (That is all that an audit would in most cases involve: a brief review of the registration form, similar to what many institutions currently do when they determine whether a study is exempt.) Key to this would be a requirement that researchers register their study with an institutional office by completing a brief form. This would make the institution aware of the research and identify the study's principal investigator. In addition the institution could choose to review some of the submissions at the time they are filed (and we contemplate that this would only be done in a relatively small percentage of the filings) and if deemed appropriate, require that the study be sent for expedited review or, in exceptionally rare cases, convened IRB review.

The proposed auditing requirement is intended to encourage institutions to use the regulatory flexibility proposed for the Excused category of research. Rather than maintaining many institutions' current practice of routinely requiring that research that meets the current exemption categories undergo some type of review before it is permitted to proceed, the proposed auditing requirement would provide institutions with information needed to assess their compliance with the new Excused category without unnecessarily subjecting all such research to either prospective review, or even routine review sometime after the study is begun.

(c) Consent Rules for Excused Research

We are contemplating that the consent practices for studies currently designated as exempt would remain in most respects unchanged for research falling within the new Excused category, even if some of those practices are clarified. For example, oral consent without written documentation would continue to be acceptable for many research studies involving educational tests, surveys, focus groups, interviews, and similar procedures.

However, we are considering the following revisions to the consent rules for the category of Excused research that involves the use of *pre-existing data or biospecimens* as described in Section 3(a)(3) above.

First, written general consent (as described below) would be required for the research use of such *biospecimens.* This would be a change from the current rules which allow research without consent when a biospecimen is used for research under conditions where the researcher does not possess information that would allow them to identify the person whose biospecimen is being studied.

Second, with regard to the researchers' use of *pre-existing data* (*i.e.* data that were previously collected for purposes other than the currently proposed research study):

a. If the data was originally collected for *non-research* purposes, then, as is currently the rule, written consent would only be required if the researcher obtains information that identifies the subjects. There would accordingly be no change in the current ability of researchers to conduct such research using de-identified data or a limited data set, as such terms are used in the HIPAA Rules (see Section V), without obtaining consent.

b. If the data was originally collected for *research* purposes, then consent would be required regardless of whether the researcher obtains identifiers. Note that this would be a change with regard to the current interpretation of the Common Rule in the case where the researcher does not obtain any identifiers. That is, the allowable current practice of telling the subjects, during the initial research consent, that the data they are providing will be used for one purpose, and then after stripping identifiers, allowing it to be used for a new purpose to which the subjects never consented, would not be allowed.

In most instances, the consent requirements described above would have been met at the time that the biospecimens or data were initially collected, when the subject would have signed a standard, brief general consent form allowing for broad, future research. This brief consent could be broad enough to cover all data and biospecimens to be collected related to a particular set of encounters with an institution (*e.g.* hospitalization) or to any data or biospecimens to be collected at anytime by the institution. Importantly, this standardized general consent form would permit the subject to say no to all future research. In addition, there are likely to be a handful of special categories of research with

biospecimens that, given the unique concerns they might raise for a significant segment of the public, would be dealt with by check-off boxes allowing subjects to separately say yes or no to that particular type of research (*e.g.,* perhaps creating a cell line, or reproductive research). Participation in a research study (such as a clinical trial) could not be conditioned on agreeing to allow future open-ended research using a biospecimen. With regard to the secondary research use of *pre-existing data,* on those occasions when oral consent was acceptable under the regulations for the initial data collection, it is envisioned that subjects would have typically provided their oral consent for future research at the time of the initial data collection; a written consent form would not have to be signed in that circumstance. Table 1 at the end of Section V illustrates the consent requirements for pre-existing data in the context of the data security and information protection requirements which would also apply.

Third, these changes would only be applied prospectively, not retrospectively. In other words, they would only apply to biospecimens and data that are collected after the effective date of the new rules.

And fourth, there would be rules (to be determined) that would allow for waiver of consent under specified circumstances, though those conditions would not necessarily be the same as those for other types of research.

(d) Overall Consequences for Current Review Practices

The proposal for changes described in sections (a) through (c) above would eliminate the current practice of not allowing researchers to begin conducting such minimal risk studies until a reviewer has determined the study does indeed meet the criteria for being exempt. Such delay is not currently required by the Common Rule, and appears to slow research without adding significant protection to subjects. Instead, under the plan being considered, researchers would file with their institution or IRB a brief registration form (about one page long) that provides essential information about the study, including, for example, information about who will be the principal investigator, and the purpose of the study. The researchers would then be authorized to begin conducting the study after the filing (unless the institution chose to review that filing and determined that the research did not qualify as Excused). It would be made clear that the regulations would not require, and in fact, would discourage, having each of these registration forms undergo a comprehensive administrative review prior to commencing the study or even afterward.

Comments and recommendations are requested on any of the above proposals under consideration and on the following specific questions:

Question 14: Are these expansions in the types of studies that would qualify for this Excused category appropriate? Would these changes be likely to discourage individuals from participating in research? Might these changes result in inappropriately reduced protections for research subjects, or diminished attention to the principles of respect for persons, beneficence, and justice?

Question 15: Beyond the expansions under consideration, are there other types of research studies that should qualify for the Excused category? Are there specific types of studies that are being considered for inclusion in these expansions, that should not be included because they should undergo prospective review for ethical or other reasons before a researcher is allowed to commence the research?

Question 16: Should research involving surveys and related methodologies qualify for the Excused category only if they do not involve topics that are emotionally charged, such as sexual or physical abuse? If so, what entity should be responsible for determining whether a topic is or is not emotionally charged?

Question 17: What specific social and behavioral research methodologies should fall within the Excused category? Under what circumstances, if any, should a study qualify for the Excused category if the study involves a form of deception (and if so, how should ''deception'' be defined)?

Question 18: Currently some IRBs make determinations regarding whether clinical results should be returned to study participants. How should such determinations be made if the study now fits in the Excused category? Can standard algorithms be developed for when test results should be provided to participants and when they should not (*e.g.,* if they can be clinically interpreted, they must be given to the participants?).

Question 19: Regarding the Excused category, should there be a brief waiting period (*e.g.* one week) before a researcher may commence research after submitting the one-page registration form, to allow institutions to look at the forms and determine if some studies should not be Excused?

Question 20: The term ''Excused'' may not be the ideal term to describe the studies that will come within the proposed revision of the current category of exempt studies, given that these studies will be subject to some protections that are actually greater than those that currently exist. Might a term such as ''Registered'' better emphasize that these studies will in fact be subject to a variety of requirements designed to protect participants? We welcome other suggestions for alternative labels that might be more appropriate.

Question 21: Is it appropriate to require institutions holding a Federalwide Assurance to conduct retrospective audits of a percentage of the Excused studies to make sure they qualify for inclusion in this category? Should the regulations specify a necessary minimum percentage of studies to be audited in order to satisfy the regulatory requirements? Should some other method besides a random selection be used to determine which Excused studies would be audited?

Question 22: Are retrospective audit mechanisms sufficient to provide adequate protections to subjects, as compared to having research undergo some type of review prior to a researcher receiving permission to begin a study? Might this new audit mechanism end up producing a greater burden than the current system? Do researchers possess the objectivity and expertise to make an initial assessment of whether their research qualifies for the Excused category? By allowing researchers to make their own determinations, without prospective independent review, will protections for some subjects be inappropriately weakened? If allowing researchers to make such determinations without independent review would generally be acceptable, are there nonetheless specific categories of studies included in the proposed expansion for which this change would inappropriately weaken protections for subjects? And will the use of a one-page registration form give institutions sufficient information to enable them to appropriately conduct the audits?

Question 23: Under what circumstances should it be permissible to waive consent for research involving the collection and study of existing data and biospecimens as described in Section 3(a)(3) above? Should the rules for waiving consent be different if the information or biospecimens were originally collected for research purposes or non-research purposes? Should a request to waive informed consent trigger a requirement for IRB review?

Question 24: The Common Rule has been criticized for inappropriately being applied to—and inhibiting research in—certain activities, including quality improvement, public health activities, and program evaluation studies.[50 51 52] Regarding quality improvement, for example, these activities are in many instances conducted by health care and other organizations under clear legal authority to change internal operating procedures to increase safety or otherwise improve performance, often without the consent of staff or clients, followed by monitoring or evaluation of the effects. It is far from clear that the Common Rule was intended to apply to such activities, nor that having it apply produces any meaningful benefits to the public. Indeed, its application to such activities, and requiring IRB review and compliance with informed consent requirements, might have a chilling effect on the ability to learn from, and conduct, important types of innovation. We seek comment on whether and, if so, how, the Common Rule should be changed to clarify whether or not oversight of quality improvement, program evaluation studies, or public health activities are covered. Are there specific types of these studies for which the existing rules (even after the changes proposed in this Notice) are inappropriate? If so, should this problem be addressed through modifications to the exemption (Excused) categories, or by changing the definition of ''research'' used in the Common Rule to exclude some of these studies, or a combination of both? And if the definition of research were to be changed, how should the activities to be excluded be defined (*e.g.,* ''quality improvement'' or ''program evaluation'')? Are there some such activities that should not be excluded from being subject to the Common Rule because the protections provided by that rule are appropriate and no similar protections are provided by other regulations? With regard to quality improvement activities, might it be useful to adopt the distinction made by the HIPAA Privacy Rule (45 CFR 164.501(1)), which distinguishes between ''health care operations'' and ''research'' activities, defining ''health care operations'' to include ''conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities''?

Question 25: Are there certain fields of study whose usual methods of inquiry were not intended to or should not be covered by the Common Rule (such as classics, history, languages, literature, and journalism) because they do not create generalizable knowledge and may be more appropriately covered by ethical codes that differ from the ethical principles embodied in the Common Rule? If so, what are those fields, and how should those methods of inquiry be identified? Should the Common Rule be revised to explicitly state that those activities are not subject to its requirements?

Question 26: The current exempt category 5 applies to certain research and demonstration projects that are designed to study or evaluate public benefit or service programs. Is the circumstance that a particular demonstration project generates ''broad'' knowledge incorrectly being used as a reason to prevent certain activities (including section 1115 waivers under Medicaid) from qualifying for exempt category 5? If so, how should this exemption (as part of the new category of Excused research) best be revised to assure that it will no longer be misinterpreted or misapplied? Would broadening the interpretation of the exemption result in inappropriately increased risks to participants in research? If so, how could such risks be mitigated? Also, is there a need to update or otherwise revise the ''OPRR Guidance on 45 CFR 46.101(b)(5)''?

Question 27: The Common Rule currently states (45 CFR 46.111(a)(2)) that an IRB ''should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among the research risks that fall within the purview of its responsibility.'' Do IRBs correctly interpret this provision as meaning that while they should be evaluating risks to the individual subjects participating in a study, it is not part of their mandate to evaluate policy issues such as how groups of persons or institutions, for example, might object to conducting a study because the possible results of the study might be disagreeable to them?[53] If that is not how the provision is typically interpreted, is there a need to clarify its meaning?

Question 28: For research that requires IRB approval, the Common Rule does not currently require that the researcher always be allowed some form of appeal of a decision (*e.g.,* disapproval of a project). Some institutions have voluntarily chosen to provide appeal mechanisms in some instances, by, for example, allowing the researcher to present the project to a different IRB, or by having it reviewed by a special ''appeal'' IRB that is composed of members chosen from among the membership of the institution's other IRBs. Should the Common Rule include a requirement that every institution must provide an appropriate appeal mechanism? If so, what should be considered acceptable appeal mechanisms? Should such appeal mechanisms, or different ones, be available for appeals asserting that the investigation is not research, or that the research does not require IRB approval?

Question 29: As noted above, IRBs sometimes engage in activities beyond those that are required by the regulations. For example, an IRB might review some studies for the purpose of determining whether or not they qualify for exemption (the new Excused category), or might review studies involving the analysis of data that is publicly available. Would it be helpful, in furtherance of increased transparency, to require that each time an IRB takes such an action, it must specifically identify that activity as one that is not required by the regulations?

III. Streamlining IRB Review of Multi-Site Studies

Currently, a substantial amount of research takes place by means of multi-site studies wherein a single research study is conducted at numerous institutions. Multi-site studies are particularly common in clinical trials, survey epidemiology, and education contexts. While the Common Rule does require that each institution engaged in a multi-site research study obtain IRB approval of the study, it does not require that a separate local IRB at each institution conduct such review. (*Note:* While the Common Rule does not require local IRB review by each institution engaged in a multi-site research study, the statute that pertains to FDA's regulation of device investigations requires sponsors to submit the protocol to the ''local institutional review committee which has been established in accordance with regulations of the Secretary to supervise clinical testing of devices in the facilities where the proposed clinical testing is to be conducted.'' The only statutory exception is if a local IRB does not exist or its review is determined to be ''inadequate'' (21 U.S.C. 360j(g)(3)(A)). Accordingly, the change proposed in this ANPRM regarding the use of one IRB of record for multi-site studies would not apply to FDA-regulated device studies.) However, in many cases, a local IRB for each institution does independently review the research protocol, informed consent

documents and other materials, sometimes resulting in hundreds of reviews for one study. When any one of these IRBs requires changes to the research protocol that are adopted for the entire study, investigators must re-submit the revised protocol to all of the reviewing IRBs. This process can take many months and can significantly delay the initiation of research projects. Separately, there are reports showing that there can be widely differing outcomes regarding the level of review required from IRB to IRB, even for identical studies.[54]

The choice to have multi-site research reviewed by a central IRB, or by an IRB at another institution, is voluntary. In practice, most institutions have been reluctant to replace review by their local IRBs with review by a central IRB.[55 56] Participants in two meetings on alternative IRB models that OHRP co-sponsored in November 2005 and November 2006 indicated that one of the key factors influencing institutions' decisions about this issue is OHRP's current practice of enforcing compliance with the Common Rule through the institutions that were engaged in human subjects research, even in circumstances when the regulatory violation is directly related to the responsibilities of an external IRB.[57]

Many commentators[58] claim that multiple IRB reviews do not enhance the protection of human subjects and may, in fact, divert valuable resources from more detailed reviews of other studies. Relevant local contextual issues (*e.g.,* investigator competence, site suitability) pertinent to most clinical studies can be addressed through mechanisms other than local IRB review. For research where local perspectives might be distinctly important (*e.g.,* in relation to certain kinds of vulnerable populations targeted for recruitment) local IRB review could be limited to such consideration(s), but again, IRB review is not the only mechanism for addressing such issues. The evaluation of a study's social value, scientific validity, and risks and benefits, and the adequacy of the informed consent document and process generally do not require the unique perspective of a local IRB.

To respond to this concern, central IRBs have been developed. The National Cancer Institute created a central IRB for adult research studies in 2001 and a central pediatric oncology IRB in 2004. Similarly, the Department of Veterans Affairs has required review of certain multi-site protocols by a single national IRB since 2008. Also, certain groups of private institutions have joined together to develop their own central IRBs. These central IRBs reduce the workload for local IRBs and may minimize institutional conflicts of interest. Since 2006, FDA has endorsed the use of a centralized IRB review process in multi-site clinical trials of investigational new drugs and has issued guidance intended to assist sponsors, institutions, IRBs, and clinical investigators on its implementation.[59]

Public comment is requested on the feasibility, advantages, and disadvantages of mandating that all domestic sites in a multi-site study rely upon a single IRB as their IRB of record for that study. (This would apply regardless of whether the study underwent convened review or expedited review.) This proposal would only affect which IRB would be designated as the IRB of record for institutional compliance with the IRB review requirements of the Common Rule. It would not relieve any site of its other obligations under the regulations to protect human subjects. Nor would it prohibit institutions from choosing, for their own purposes, to conduct additional internal ethics reviews, though such reviews would no longer have any regulatory status in terms of compliance with the Common Rule (and could be discouraged). To address institutions' concerns about OHRP's practice of enforcing compliance with 45 CFR part 46 through the institutions that are engaged in human subjects research, appropriate accompanying changes would be made in enforcement procedures to hold external IRBs directly accountable for compliance with certain regulatory requirements (see, *e.g.,* the proposal on IRB accountability released by OHRP in 2009, at *http://www.hhs.gov/ohrp/newsroom/rfc/com030509.html*)

This change is being considered only for domestic sites in multi-site studies. In most cases, independent local IRB reviews of international sites are appropriate because it might be difficult for an IRB in the U.S. to adequately evaluate local conditions in a foreign country that could play an important role in the ethical evaluation of the study.

Comments and recommendations are requested on the following:

Question 30: What are the advantages and disadvantages of mandating, as opposed to simply encouraging, one IRB of record for domestic multi-site research studies?

Question 31: How does local IRB review of research add to the protection of human subjects in multi-site research studies? How would mandating one IRB of record impair consideration of valuable local knowledge that enhances protection of human subjects? Should the public be concerned that a centralized IRB may not have adequate knowledge of an institution's specific perspective or the needs of their population, or that a centralized IRB may not share an institution's views or interpretations on certain ethical issues?

Question 32: To what extent are concerns about regulatory and legal liability contributing to institutions' decisions to rely on local IRB review for multi-site research? Would the changes we are considering adequately address these concerns?

Question 33: How significant are the inefficiencies created by local IRB review of multi-site studies?

Question 34: If there were only one IRB of record for multi-site studies, how should the IRB of record be selected? How could inappropriate forms of ''IRB shopping''—intentionally selecting an IRB that is likely to approve the study without proper scrutiny—be prevented?

IV. Improving Informed Consent

Currently, under the Common Rule and FDA regulations, investigators generally must obtain and document the subjects' informed consent to participate in research.[60] The regulations currently require that the consent forms include at least eight specific items of information. Various aspects of the consent forms have been heavily criticized, as has the amount of time IRBs devote to editing and revising consent forms.

In addition, consent forms may frequently fail to include some of the most important pieces of information that a person would need in order to make an ''enlightened decision'' (to quote the Nuremberg Code) to enroll in a research study.[61] Instead of presenting the information in a way that is most helpful to prospective subjects—such as explaining why someone might want to choose not to enroll—the forms often function as sales documents, instead of as genuine aids to good decision-making.[62]

While the regulations have changed in only relatively modest ways since 1974, the average length of consent forms has been increasing since then,[63] and the forms have become excessively long and legalistic, even for relatively routine and low risk research studies.[64] For example, it is not uncommon for the documents to stretch to 15 or even 30 pages in length. Moreover, studies have shown that the reading level of many of these documents is above the desired 8th grade level.[65 66 67] Length and high reading levels may inhibit people from reading the full document and from understanding relevant information.

Further, some have argued that the requirements for obtaining waivers of informed consent or waivers of documentation of informed consent are confusing and inflexible, which leads to inconsistent application.[68] These problems may not be inherent in the language of the Common Rule, but there may be some changes to the regulations or clarifications as to how to interpret and implement such regulations that could improve informed consent documents and process.

A. Improving Consent Forms

We are considering a number of modifications to the regulations to improve consent forms, including (1) prescribing appropriate content that must be included in consent forms, with greater specificity than is provided in the current regulations; (2) restricting content that would be *inappropriate* to include in consent forms; (3) limiting the acceptable length of various sections of a consent form; (4) prescribing how information should be presented in consent forms, such as information that should be included at the very beginning of the consent form, or types of information that should be included in appendices and not in the main body of the consent form; (5) reducing institutional ''boilerplate'' in consent forms (that is, standard language that does little to genuinely inform subjects, and often is intended to primarily protect institutions from lawsuits); and (6) making available standardized consent form templates, the use of which could satisfy applicable regulatory provisions.

Comments and recommendations are requested on the following:

Question 35: What factors contribute to the excessive length and complexity of informed consent forms, and how might they be addressed?

Question 36: What additional information, if any, should be required by the regulations to assure that consent forms appropriately describe to subjects, in concise and clear language, alternatives to participating in the research study and why it may or may not be in their best interests to participate? What modifications or deletions to the required elements would be appropriate?

Question 37: Would the contemplated modifications improve the quality of consent forms? If not, what changes would do so?

Question 38: Should the regulations require that, for certain types of studies, investigators assess how well potential research subjects comprehend the information provided to them before they are allowed to sign the consent form?

Question 39: If changes are made to the informed consent requirements of the Common Rule, would any conforming changes need to be made to the authorization requirements of the HIPAA Privacy Rule?

Question 40: Would informed consent be improved if the regulations included additional requirements regarding the consent process, and if so, what should be required? For example, should investigators be required to disclose in consent forms certain information about the financial relationships they have with study sponsors?

B. Waiver of Informed Consent or Documentation of Informed Consent in Primary Data Collection

Currently the Common Rule permits an IRB to waive the requirements for obtaining informed consent under two sets of circumstances (45 CFR 46.116 (c) or (d)).[69] The most common set of circumstances requires that four specific criteria be satisfied (45 CFR 46.116(d)). Many commentators have argued that these conditions for waiver of consent are vague and applied haphazardly at different institutions.[70] [71] In response to these concerns, the Secretary's Advisory Committee on Human Research Protections (SACHRP), through its Subcommittee on Subpart A, developed several recommendations regarding the interpretation of these waiver criteria.[72]

IRBs, under the Common Rule (45 CFR 46.117(c)), also may waive the requirement for the investigator to obtain a signed consent form for some or all subjects. The current criteria for such a waiver may not be flexible enough for dealing with a variety of circumstances, such as when Federally-sponsored research is conducted in an international setting where for cultural or historical reasons signing documents may be viewed as offensive and problematic. It is worth noting that for studies that only involve surveys, focus groups, and interviews with competent adults, there will usually be no need to apply the waiver of documentation criteria provided at 45 CFR 46.117(c). Such studies will generally qualify for the new Excused category, with only oral consent required.

Comments and recommendations are requested on the following:

Question 41: What changes to the regulations would clarify the current four criteria for waiver of informed consent and facilitate their consistent application?

Question 42: In circumstances where the regulations would permit oral consent, what information should investigators be required to provide to prospective subjects? Are all of the elements of informed consent included at 45 CFR 46.116 necessary to be conveyed, or are some elements unnecessary? If some elements should not be required for oral consent, which ones are unnecessary?

Question 43: Are there additional circumstances under which it should be permissible to waive the usual requirements for obtaining or documenting informed consent?

Question 44: Are there types of research involving surveys, focus groups, or other similar procedures in which oral consent without documentation should not be permitted? What principles or criteria distinguish these cases?

C. Strengthening Consent Protections Related to Reuse or Additional Analysis of Existing Data and Biospecimens

Critics of the existing rules have observed that the current requirements for informed consent for future research with pre-existing data and biospecimens are confusing and consume substantial amounts of researchers' and IRBs' time and resources. Under the Common Rule and the HIPAA Privacy Rule, if identifiers are removed, specimens and data that have been collected for purposes other than the proposed research can be used without any requirement for informed consent or a HIPAA authorization. When these identifiers have not been removed, under the Common Rule, investigators may be allowed in certain situations to obtain a general consent for future research with existing biospecimens and other information stored in databases. Conversely, the Department's current interpretation of the HIPAA Privacy Rule requires that authorizations for research be study-specific. Thus, the Privacy Rule currently has not been interpreted to permit general authorizations for future unspecified research uses of health information. Importantly, the HHS Office for Civil Rights (OCR) has recently sought and is currently reviewing public comment on the extent to which a single general authorization may cover a range of future research uses of an individual's health information (see 75 FR 40868, 40893 available at *http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/nprmhitech.pdf*).

Because biospecimens and data that have been collected for clinical use or purposes other than for the proposed research are often an important source of information and material for investigators, and the reuse of existing data and materials can be an efficient

mechanism for conducting research without presenting additional physical or psychological risks to the individual, it seems prudent to consider changes to current regulations. As the IOM recently stated in *Beyond the HIPAA Privacy Rule: Enhancing Privacy, Improving Health Through Research,* it is important to ''facilitate important health research by maximizing the usefulness of patient data associated with biospecimens banks and in research databases, thereby allowing novel hypotheses to be tested with existing data and materials as knowledge and technology improve.'' [73]

Some critics, including potential and former research subjects, object to research performed on a person's biospecimens without consent. This was recently highlighted in the book, *The Immortal Life of Henrietta Lacks.* [74] Conversely, investigators are concerned that the need for informed consent for every use of a biospecimen will greatly inhibit research.[75] [76] [77] They worry that obtaining individual consent for each separate research study will create unmanageable logistical demands, making valuable research impossible. They also worry that research will be skewed by individuals who refuse consent, undermining the scientific validity of the research. An accumulating body of data indicates that while most individuals want to be able to decide whether their biospecimens are available for research, they often do not desire to have control over which specific researchers use their samples, for which diseases, at which institutions.[78] [79] [80]

The potential changes to the consent rules that were described in detail in Section II(B)(3)(c) (in the discussion of revising the rules for exempt studies) are being considered to strengthen and align consent protections, simultaneously addressing the concerns of individuals, while ensuring the pursuit of important research.

Comments and recommendations are requested on any of the above proposals under consideration and on the following specific questions:

Question 45: Under what circumstances should future research use of data initially collected for non-research purposes require informed consent? Should consent requirements vary based on the likelihood of identifying a research subject? Are there other circumstances in which it should not be necessary to obtain additional consent for the research use of currently available data that were collected for a purpose other than the currently proposed research?

Question 46: Under what circumstances should unanticipated future analysis of data that were collected for a different research purpose be permitted without consent? Should consent requirements vary based on the likelihood of identifying a research subject?

Question 47: Should there be a change to the current practice of allowing research on biospecimens that have been collected outside of a research study (*i.e.* ''left-over'' tissue following surgery) without consent, as long as the subject's identity is never disclosed to the investigator?

Question 48: What, if any, are the circumstances in which it would be appropriate to waive the requirement to obtain consent for additional analysis of biospecimens?

Question 49: Is it desirable to implement the use of a standardized, general consent form to permit future research on biospecimens and data? Are there other options that should be considered, such as a public education campaign combined with a notification and opt-out process?

Question 50: What is the best method for providing individuals with a meaningful opportunity to choose not to consent to certain types of future research that might pose particular concerns for substantial numbers of research subjects beyond those presented by the usual research involving biospecimens? How should the consent categories that might be contained in the standardized consent form be defined (*e.g.* an option to say yes-or-no to future research in general, as well as a more specific option to say yes-or-no to certain specified types of research)? Should individuals have the option of identifying their own categories of research that they would either permit or disallow?

Question 51: If the requirement to obtain consent for all research uses of biospecimens is implemented, how should it be applied to biospecimens that are collected outside of the U.S. but are to be used in research supported by a Common Rule agency? Should there be different rules for that setting, and if so, what should they be? Should they be based on the relevant requirements in the countries where the biospecimens were collected?

Question 52: Should the new consent rules be applied only prospectively, that is, should previously existing biospecimens and data sets be ''grandfathered'' under the prior regulatory requirements? If so, what are the operational issues with doing so?

Question 53: In cases in which consent for future research use is not obtained at the time of collection, should there be a presumption that obtaining consent for the secondary analysis of existing biospecimens or identifiable data would be deemed impracticable, such that consent could be waived, when more than a specified threshold number of individuals are involved? (SACHRP provided the Secretary with recommendations on this issue.[81]) If so, what threshold number should constitute impracticability? Is the number of potential human subjects the only measure of impracticability?

V. Strengthening Data Protections To Minimize Information Risks

Collection of identifiable data, as well as secondary analyses of such data, poses informational risks. The assurance that identifiable information will be safeguarded is important for an individual's willingness to participate in research. Further, we recognize that there is an increasing belief that what constitutes ''identifiable'' and ''de-identified'' data is fluid; rapidly evolving advances in technology coupled with the increasing volume of data readily available may soon allow identification of an individual from data that is currently considered de-identified. In this sense, much of what is currently considered de-identified is also potentially identifiable data.

While there are currently some regulatory approaches that can be used to safeguard and maintain the confidentiality of research participants' information, such protections are limited in scope. The HIPAA Privacy and Security Rules generally require safeguards for individually identifiable health information and place limits and conditions on the use and disclosure of such information. However, the Rules only apply to researchers if they are part of a HIPAA covered entity (*e.g.,* a covered health care provider or health plan) and, to a certain extent, to researchers that are business associates of a covered entity.

Separate from the HIPAA Rules, the Privacy Act of 1974, as amended (5 U.S.C. 552a [82]) binds Federal agencies to protect personally identifiable information in their possession and control. It prohibits the disclosure (without prior consent or notice) of records that are retrieved by personal identifiers. In addition, there are other Federal privacy provisions that may need to be considered, but all have a limited scope. For example, Title 5 of the E-Government Act,[83] entitled the ''Confidential Information Protection and Statistical Efficiency Act of 2002,''(CIPSEA) provides additional protections for confidential statistical

information collected by the Federal government. However, neither the Privacy Act nor CIPSEA generally apply to grant-funded investigators who are neither Federal employees nor contractors. (An additional example is the Department of Justice's set of regulations for protecting information collected in certain research and other programs, at 28 CFR part 22.)

Furthermore, none of these statutes was written with an eye toward the advances that have come in genetic and information technologies that make complete de-identification of biospecimens impossible and re-identification of sensitive health data easier. Certificates of confidentiality may be issued upon request through the authority of HHS (section 301(d) of the Public Health Service Act (42 U.S.C. 241(d)) to any investigator conducting IRB-approved research that involves the collection of sensitive and identifiable information. However, certificates of confidentiality do not *require* investigators to refuse to disclose identifying information; rather, they convey the legal *right* to refuse to disclose. Certificates of confidentiality also do not protect against unauthorized or accidental disclosures of identifiable private information due to inadequate data security procedures. The National Institute of Justice (NIJ) provides a different model for privacy protection: all NIJ-funded investigators collecting identifying information must apply for a privacy certificate and are required to keep identifiable data confidential (28 CFR part 22).

Consequently, other fundamental protections for research participants may be warranted beyond updating the requirements for independent review and informed consent currently provided by the Common Rule. As noted above (Section II(A)), a solution we are considering is to mandate data security and information protection standards that would apply to all research that collected, stored, analyzed or otherwise reused identifiable or potentially identifiable information. This would include research with biospecimens, survey data, and research using administrative records as well as secondary analysis of the data. However, we are considering applying these new protections only to prospective collections of data and biospecimens after the implementation of any changes to the Common Rule and not retrospectively to research involving existing data, including stored biospecimens and their subsequent analysis. Further, it is envisioned that these data security and information protection standards would be scaled appropriately to the level of identifiability of the data.

While the discussion below focuses on these data security and information protection standards, we also are interested in whether there are other changes that might be made to the Common Rule, such as appropriate limitations on researchers' disclosure of identifiable or potentially identifiable information, that would strengthen, and create more uniformity in, the promises of confidentiality that currently exist for human subjects.

A. Consistently Characterizing Information With Respect to Potential for Identification

Currently, the HIPAA Privacy Rule's standards for identifiable and de-identified information are not aligned with what is considered human subjects research under the Common Rule. Under the Common Rule research does not involve ''human subjects'' if the investigator does not obtain data about individuals through an interaction or intervention or obtain identifiable private information about individuals.[84] Under the regulatory definition of human subject, ''private information'' is described as ''information about behavior that occurs in a context in which the individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record).'' Private information is not considered to be identifiable under the Common Rule if the identity of the subject is not or may not be ''readily ascertained'' by the investigator from the information. Under the HIPAA Privacy Rule, health information is de-identified and thus exempt from the Rule, if it neither identifies nor provides a reasonable basis to identify an individual.

The HIPAA Privacy Rule provides two ways to de-identify information: (1) A formal determination by a qualified expert that the risk is very small that an individual could be identified; or (2) the removal of all 18 specified identifiers of the individual and of the individual's relatives, household members, and employers, as long as the covered entity has no actual knowledge that the remaining information could be used to identify the individual (45 CFR 164.514(b)). Under these rules, some information that is not considered identifiable under the Common Rule may be considered identifiable for purposes of the HIPAA Privacy Rule, such as dates of service or zip codes. However, to accommodate investigators' need to have access to data elements such as these, the Privacy Rule also provides for a *limited data set* to be used for research purposes, which is data that has been stripped of direct identifiers but that may retain certain elements, such as dates of service and zip codes (45 CFR 164.514(e)(2)). Because a limited data set is not considered fully de-identified, the Privacy Rule requires that a covered entity enter into a data use agreement with the investigator to prohibit the re-identification of the information and to otherwise protect the information.

We are considering adopting the HIPAA standards for purposes of the Common Rule regarding what constitutes individually identifiable information, a limited data set, and de-identified information, in order to address inconsistencies regarding these definitions and concepts between the HIPAA Privacy Rule and the Common Rule. Furthermore, in light of emerging technologies and evolving informational risks, it might be advisable to evaluate the set of identifiers that must be removed for a data set to be considered ''de-identified'' under both human subjects regulations and the HIPAA Privacy Rule. Table 1 in Section II illustrates how the HIPAA Privacy Rule's standards of identifiability would apply to the Excused category of research involving pre-existing information or biospecimens.

Regardless of what information is removed, it is possible to extract DNA from a biospecimen itself and potentially link it to otherwise available data to identify individuals. Consequently, we are considering categorizing all research involving the primary collection of biospecimens as well as storage and secondary analysis of existing biospecimens as research involving identifiable information (see Table 1, at the end of this section).

Comments and recommendations are requested on the following:

Question 54: Will use of the HIPAA Privacy Rule's standards for identifiable and de-identified information, and limited data sets, facilitate the implementation of the data security and information protection provisions being considered? Are the HIPAA standards, which were designed for dealing with health information, appropriate for use in all types of research studies, including social and behavioral research? If the HIPAA standards are not appropriate for all studies, what standards would be more appropriate?

Question 55: What mechanism should be used to regularly evaluate and to recommend updates to what is

considered de-identified information? Beyond the mere passage of time, should certain types of triggering events such as evolutions in technology or the development of new security risks also be used to demonstrate that it is appropriate to reevaluate what constitutes de-identified information?

Question 56: DNA extracted from de-identified biospecimens can be sequenced and analyzed in other ways, with the results sometimes being linked to other available data than may allow a researcher to identify the persons whose specimens were being studied. How should Federal regulations manage the risks associated with the possibility of identification of such biospecimens? Should a human biospecimen be considered identifiable in and of itself? What are the advantages and disadvantages of considering all future research with biospecimens to be research with identifiable information?

Question 57: Should some types of genomic data be considered identifiable and, if so, which types (*e.g.,* genome-wide SNP analyses or whole genome sequences)?

B. Standards for Data Security and Information Protection

The goal of information protection is to prevent breach of confidentiality through unauthorized access, inappropriate disclosure, or re-identification at either the individual or in some cases the subgroup level. Information that contains direct identifiers of individuals poses a greater informational risk than does a limited data set, which in turn poses a greater informational risk than de-identified information.

As discussed in Section II(A), the majority of unauthorized disclosures of identifiable health information from investigators occur due to inadequate data security.[85] IRB review or oversight of research posing informational risks may not be the best way to minimize the informational risks associated with data on human subjects. Instead, informational risks may be best mitigated through compliance with stringent standards for data security and information protection that are effectively enforced through mechanisms such as periodic random audits.

We are considering three specific requirements that could strengthen the protections for research studies that pose informational risks. First, research involving the collection and use of identifiable data, as well as data in limited data set form, could be required to adhere to data security standards modeled on the HIPAA Security Rule.[86] In particular, for research involving individually identifiable information, all biospecimens, and limited data sets, data security standards could require the use of reasonable and appropriate encryption for data maintained or transmitted in electronic form and strong physical safeguards for information maintained in paper form, audit trails, and access controls that allow only authorized personnel to have access to the information. Further, investigators would be required to adhere to breach notification standards modeled on those applied to HIPAA covered entities for breaches of individually identifiable health information.[87] For research using limited data sets or de-identified information, investigators would be strictly prohibited from attempting to re-identify the subjects of the information. Requiring that investigators implement and adhere to these standard data security and information protection measures would lessen the need for investigators to enter into data use agreements to protect the limited data set, as is currently required under the HIPAA Privacy Rule. Because these mandatory protections would apply to all research studies, it should not be necessary for IRBs to review studies posing only informational risks or to consider informational risks in studies involving other risks to human subjects.

Second, data could be considered de-identified or in limited data set form even if investigators see the identifiers but do not record them in the permanent research file. To de-identify information or create limited data sets, many investigators have established complex procedures for having ''trusted third parties'' remove identifiers prior to passing on information to an investigator for a study. This adds another level of complexity and suggests that third parties are more trusted to protect information than investigators. If investigators adhere to the standards for data security and information protection there may be less need for these complex third party relationships.

Third, to strengthen the enforcement mechanisms under the Common Rule, we are considering providing for periodic random retrospective audits, and additional enforcement tools.

Comments and recommendations are requested on any of the above proposals under consideration and on the following specific questions:

Question 58: Should the new data security and information protection standards apply not just prospectively to data and biospecimens that are collected after the implementation of new rules, but instead to all data and biospecimens? Would the administrative burden of applying the rule to all data and biospecimens be substantially greater than applying it only prospectively to newly collected information and biospecimens? How should the new standards be enforced?

Question 59: Would study subjects be sufficiently protected from informational risks if investigators are required to adhere to a strict set of data security and information protection standards modeled on the HIPAA Rules? Are such standards appropriate not just for studies involving health information, but for all types of studies, including social and behavioral research? Or might a better system employ different standards for different types of research? (We note that the HIPAA Rules would allow subjects to authorize researchers to disclose the subjects' identities, in circumstances where investigators wish to publicly recognize their subjects in published reports, and the subjects appreciate that recognition.)

Question 60: Is there a need for additional standardized data security and information protection requirements that would apply to the phase of research that involves data gathering through an interaction or intervention with an individual (*e.g.* during the administration of a survey)?

Question 61: Are there additional data security and information protection standards that should be considered? Should such mandatory standards be modeled on those used by the Federal government (for instance, the National Institute of Standards and Technology recently issued a ''Guide to Protecting the Confidentiality of Personally Identifiable Information.'')?

Question 62: If investigators are subject to data security and information protection requirements modeled on the HIPAA Rules, is it then acceptable for HIPAA covered entities to disclose limited data sets to investigators for research purposes without obtaining data use agreements?

Question 63: Given the concerns raised by some that even with the removal of the 18 HIPAA identifiers, re-identification of de-identified datasets is possible, should there be an absolute prohibition against re-identifying de-identified data?

Question 64: For research involving de-identified data, is the proposed prohibition against a researcher re-identifying such data a sufficient protection, or should there in some instances be requirements preventing the researcher from disclosing the de-identified data to, for example, third

parties who might not be subject to these rules?

Question 65: Should registration with the institution be required for analysis of de-identified datasets, as was proposed in Section II(B)(3) for Excused research, so as to permit auditing for unauthorized re-identification?

Question 66: What entity or entities at an institution conducting research should be given the oversight authority to conduct the audits, and to make sure that these standards with regard to data security are being complied with? Should an institution have flexibility to determine which entity or entities will have this oversight responsibility for their institution?

TABLE 1—PROPOSAL FOR THE EXCUSED CATEGORY OF RESEARCH INVOLVING PRE-EXISTING INFORMATION OR BIOSPECIMENS

	Identifiable information and all biospecimens	Limited data set (as defined in the HIPAA Privacy Rule)	De-identified information (as defined in the HIPAA Privacy Rule)
Written consent required for future research with material collected for *non-research purposes*?.	Yes, which could be obtained in connection with the initial collection.	No consent required	No consent required.
Consent for future research with material collected for *research purposes*?.	Yes. Consent for future research typically obtained at the same time as consent for initial research (which, for data, could be oral when oral consent was permissible for the initial collection).	Yes. Same rule as for ''Identifiable Information and All Biospecimens''.	Yes. Same rule as for ''Identifiable Information and All Biospecimens.''
Standardized Data Protections?*	Yes. Protections would include encryption, use only by authorized personnel with audit tracing, prompt breach notification, and periodic retrospective random audits.	Yes. Same rule as for ''Identifiable Information and All Biospecimens'' plus a prohibition against re-identification.	Yes. Protection would include prohibition on re-identification.
Registration of research with IRB or research office?.	Yes	Yes	No.
Prior Review by IRB or research office?	No, unless investigators plan to re-contact subjects with their individual research results.	No	No.

*These data protections are discussed in the context of secondary research uses of biospecimens and data, which present mostly informational risks, rather than physical risks, to participants. However, as indicated elsewhere in this ANPRM, informational risks will always be present where data and biospecimens are collected, thus requiring these data protections to be applied to any such research.

VI. Data Collection To Enhance System Oversight

Research agencies collect various types of safety data with the common goal of protecting human subjects. However, individual agency requirements for reporting such data vary. This has resulted in variations between agencies regarding their policies and requirements for the reporting of such data. For example, the Common Rule does not require investigators to report ''adverse events'', but rather references ''unanticipated problems involving risks to subjects or others.'' The relationship of ''unanticipated problems'' to ''adverse events'' historically has been unclear. Furthermore, there are some agencies that do require the reporting of many ''adverse events'' beyond those that constitute ''unanticipated problems.'' Those reporting requirements often utilize variable definitions of what constitutes such an event and require these reports on different timeframes and on various templates utilizing inconsistent vocabularies describing the severity and nature of these events.

The adverse event data collected by each agency are stored and maintained in separate datasets. The lack of connectivity and interoperability inhibits the conduct of integrated analyses and comparative studies about the frequency and severity of adverse events. Similarly, current policy requirements and current data collection practices do not foster the collection of data about the numbers of participants in various areas of research—information that is needed for characterizing the magnitude and severity of any risks.

We are considering a number of changes to improve the current system for the real-time prompt collection of such data. These changes are intended to simplify and consolidate the reporting of information that is *already required* to be promptly reported by an investigator, and *not* to expand the information that has to be reported. These changes involve (1) Using a standardized, streamlined set of data elements that nonetheless are flexible enough to enable customized safety reporting and compliance with most Federal agency reporting requirements; (2) implementing a prototype of a Web-based, Federal-wide portal (already developed by NIH, FDA, and 4 other Federal agencies) that would build on these data elements and allow investigators to submit electronically certain pre- and post-market safety data and automatically have it delivered to appropriate agencies and oversight bodies; and (3) harmonizing safety reporting guidance across all Federal agencies, including harmonizing terminology and clarifying the scope and timing of such reports. In addition to these changes, the Federal government is also considering creating a central Web-based repository to house a great deal of the information collected through the portal.

These innovations create the possibility of eliminating much of the existing multiplicity of different and confusing reporting mechanisms, and could foster greater uniformity and comparability among the safety information that gets reported. Consolidation of data reported using consistent vocabularies and terms would allow for more powerful and meaningful analyses of safety information across types of research studies than are possible at present.

Comments and recommendations are requested on any of the above proposals

under consideration and on the following specific questions:

Question 67: Is the scope of events that must be reported under current policies, including the reporting of certain ''unanticipated problems'' as required under the Common Rule, generally adequate?

Question 68: With regard to data reported to the Federal government:

a. Should the number of research participants in Federally funded human subjects research be reported (either to funding agencies or to a central authority)? If so, how?

b. What additional data, not currently being collected, about participants in human subjects research should be systematically collected in order to provide an empirically-based assessment of the risks of particular areas of research or of human subjects research more globally?

c. To what types of research should such a requirement apply (*e.g.,* interventional studies only; all types of human subjects research, including behavioral and social science research)? In addition, are there other strategies and methods that should be implemented for gathering information on the effectiveness of the human subjects protection system?

Question 69: There are a variety of possible ways to support an empiric approach to optimizing human subjects protections. Toward that end, is it desirable to have all data on adverse events and unanticipated problems collected in a central database accessible by all pertinent Federal agencies?

Question 70: Clinical trials assessing the safety and efficacy of FDA-regulated medical products (*i.e.,* phase II through IV studies) are generally required to register and, following study completion, report summary results, including adverse events, in the publicly accessible database ClinicalTrials.gov. Is the access to information on individual studies provided by this resource sufficiently comprehensive and timely for the purposes of informing the public about the overall safety of all research with human participants?

VII. Extension of Federal Regulations

Currently, an institution engaged in non-exempt human subjects research conducted or supported by any Federal department or agency that has adopted the Common Rule is required to hold an OHRP-approved Federalwide Assurance (FWA) or another assurance of compliance approved by the department or agency conducting or supporting the research. The FWA mandates the application of the Common Rule only to certain Federally funded research projects. Most institutions voluntarily extend the applicability of their FWAs to all the research conducted at their institutions, even research not conducted or supported by one of the Federal departments or agencies that have adopted the Common Rule. However, such extension is not required.

The IOM and NBAC, among many others, have called for legislation that would extend the Common Rule protections to all research with human subjects conducted in the U.S., regardless of funding source.

We are considering an alternative regulatory proposal to partially fulfill this goal: requiring domestic institutions that receive some Federal funding from a Common Rule agency for research with human subjects to extend the Common Rule protections to all research studies conducted at their institution.

Comments and recommendations are requested on the following:

Question 71: Should the applicability of the Common Rule be extended to all research that is *not* Federally funded that is being conducted at a domestic institution that receives some Federal funding for research with human subjects from a Common Rule agency?

VIII. Clarifying and Harmonizing Regulatory Requirements and Agency Guidance

From the outset of the development of the Common Rule, the importance of consistency across the Federal government has been recognized. In May 1982, the Chairman of the Federal Coordinating Council for Science, Engineering, and Technology appointed an Ad Hoc Committee for the Protection of Human Research Subjects. In consultation with OSTP and the Office of Management and Budget, the Ad Hoc Committee agreed that uniformity is desirable among departments and agencies to eliminate unnecessary regulation and to promote increased understanding and ease of compliance by institutions that conduct Federally supported or regulated research involving human subjects. By 1991, 15 Federal departments and agencies had adopted the Common Rule.

However, each of the departments and agencies that have adopted the Common Rule may issue its own guidance regarding the protection of human subjects. Consequently, there are variations in the guidances issued.

In addition, other Federal laws and regulations have been enacted that relate to the protection of human subjects, most prominently, the research provisions of the HIPAA Privacy Rule. However, since the HIPAA regulations were developed mainly for the clinical context,[88] the rules are inconsistent with the Common Rule in certain areas. As noted above, one such inconsistency is the definition of identifiable data and another is the manner in which the two rules treat consent for future research.

Currently, there are multiple efforts to address such variation in guidance across the Federal government. The Common Rule departments and agencies have procedures for sharing proposed guidance before it is adopted. FDA and OHRP have been working closely on enhancing harmonization of guidance.

As the label of the Common Rule suggests, there seems to be a compelling case for consistency across Federal departments and agencies regarding guidance on the protections of human subjects. Nevertheless, there are arguments in favor of some departments or agencies imposing specific requirements, apart from the Common Rule, that are tailored to certain types of research. The various agencies that oversee the protection of human subjects range from regulatory agencies, to those agencies and departments that conduct research, to those that support and sponsor research. In addition, in some cases, statutory differences among the agencies have resulted in different regulatory requirements and agency guidances. Not only do the agencies have different relationships to the research, they oversee very different types and phases of research and thus there may be reasonable justifications for differences in guidance. Moreover, achieving consensus across the entire Federal government may be arduous, preventing timely issuance of guidance.

Comments and recommendations are requested on the following:

Question 72: To what extent do the differences in guidance on research protections from different agencies either strengthen or weaken protections for human subjects?

Question 73: To what extent do the existing differences in guidance on research protections from different agencies either facilitate or inhibit the conduct of research domestically and internationally? What are the most important such differences influencing the conduct of research?

Question 74: If all Common Rule agencies issued one set of guidance, would research be facilitated both domestically and internationally? Would a single set of guidance be able to adequately address human subjects protections in diverse populations and

contexts, and across the broad range of research contexts (including biomedical, national security, education and other types of social and behavioral research)?

IX. Agency Request for Information

When submitting responses to the specific questions asked in this notice, please cite the specific question by number.

In addition to the specific solicitation of comments throughout this ANPRM, general comment is invited on the current system of protections for human research subjects as implemented through the Common Rule, the HIPAA Privacy and Security Rules, and any other rules, regulations or guidance documents. In particular, comments are sought not only on ways to improve the efficiency of the current system, but about circumstances in which the protections provided by the current system might be inadequate and in need of supplementation or change in order to make sure that subjects are receiving appropriate protections.

Dated: July 20, 2011.

John Holdren,

Director, Office of Science Technology and Policy.

Kathleen Sebelius,

Secretary, HHS.

[1] The Federal Policy for the Protection of Human Subjects or the ''Common Rule'' was published in 1991 and codified in separate regulations by 15 Federal departments and agencies, as listed below (each agency includes in its chapter of the Code of Federal Regulations [CFR] section numbers and language that are identical to those of 45 CFR part 46, subpart A).

These agencies included the Department of Agriculture (7 CFR part 1c), Department of Commerce (15 CFR part 27), Department of Defense (32 CFR part 219), Department of Education (34 CFR part 97), Department of Energy (10 CFR part 745), Department of Health and Human Services (45 CFR part 46 subpart A), Department of Housing and Urban Development (24 CFR part 60), Department of Justice (28 CFR part 46), Department of Veterans Affairs (38 CFR part 16), Department of Transportation (49 CFR part 11), Consumer Product Safety Commission (16 CFR part 1028), Environmental Protection Agency (40 CFR part 26), Agency for International Development (22 CFR part 225), National Aeronautics and Space Administration (14 CFR part 1230), National Science Foundation (45 CFR part 690).

In addition, the Central Intelligence Agency must comply with all subparts of 45 CFR part 46 under Executive Order 12333, and in accordance with the Intelligence Reform and Terrorism Protection Act of 2004 (Pub. L. 108–458, Section 8306), the Department of Homeland Security adopted policies implementing the protections for human research subjects under 45 CFR part 46 for research it conducts or supports.

For all participating departments and agencies the Common Rule outlines the basic provisions for IRBs, informed consent, and Assurances of Compliance. HHS has developed additional regulations for the human subjects research it conducts or supports that apply to particular special populations: 45 CFR part 46 subparts B–D apply to research involving pregnant women, human fetuses, and neonates (subpart B), prisoners (subpart C), and children (subpart D).

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Under 45 CFR 46.116(d), an IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent otherwise required under 45 CFR part 46, or waive the requirements to obtain informed consent provided the IRB finds and documents that: (1) The research involves no more than minimal risk to the subjects; (2) The waiver or alteration will not adversely affect the rights and welfare of the subjects; (3) The research could not practicably be carried out without the waiver or alteration; and (4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

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[87] 45 CFR part 160 and 45 CFR part 164, subparts A and D.

[88] The Common Rule evolved from a long series of measures designed to protect individual research subjects from physical and mental harm. In contrast, the HIPAA Privacy Rule evolved from data protection standards such as the Fair Information Practices. See Pritts JL (2008). *The Importance and Value of Protecting the Privacy of Health Information: The Roles of the HIPAA Privacy Rule and the Common Rule in Health Research.*

[FR Doc. 2011–18792 Filed 7–22–11; 11:15 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0615]

RIN 1625–AA00

Safety Zone; Fourth Annual Chillounge Night St. Petersburg Fireworks Display, Tampa Bay, St. Petersburg, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of Tampa Bay in St. Petersburg, Florida during the Fourth Annual Chillounge Night St. Petersburg Fireworks Display on Saturday, November 19, 2011. The safety zone is necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. Persons and vessels would be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before September 9, 2011. Requests for public meetings must be received by the Coast Guard on or before August 10, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0615 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Marine Science Technician First Class Jo A. Hoover, Sector St. Petersburg Prevention Department, Coast Guard; telephone 813–228–2191, e-mail *Jo.A.Hoover@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0615), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0615'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0615'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before August 10, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for the proposed rule is the Coast Guard's authority to establish regulated navigation areas and

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

The purpose of the proposed rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

Discussion of Proposed Rule

On November 19, 2011, a fireworks display is scheduled to take place during the Fourth Annual Chillounge Night St. Petersburg, an annual outdoor party, in St. Petersburg, Florida. The fireworks, which will be launched from Spa Beach Park, will explode over the waters of Tampa Bay. The fireworks display is scheduled to commence at 10 p.m. and conclude at approximately 10:05 p.m.

The proposed rule would establish a temporary safety zone that encompasses certain waters of Tampa Bay in the vicinity of Spa Beach in St. Petersburg, Florida. The safety zone would be enforced from 9:30 p.m. on November 19, 2011, 30 minutes prior to the scheduled commencement of the fireworks display at approximately 10 p.m., to ensure the safety zone is clear of persons and vessels. Enforcement of the safety zone would cease at 10:45 p.m. on November 19, 2011, 40 minutes after the scheduled conclusion of the fireworks display, to account for possible delays. Persons and vessels would be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port St. Petersburg or a designated representative. Persons and vessels would be able to request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port St. Petersburg by telephone at 727–824–7524, or a designated representative via VHF radio on channel 16, to request authorization. The Coast Guard would provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Regulatory Analyses

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

Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the 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 NPRM has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget. A draft regulatory assessment follows:

The economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone would be enforced for less than two hours; (2) vessel traffic in the area would be minimal during the enforcement period; (3) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port St. Petersburg or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (4) persons and vessels would still be able to enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port St. Petersburg or a designated representative; and (5) the Coast Guard would provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Tampa Bay encompassed within the safety zone from 9:30 p.m. until 10:45 p.m. on November 19, 2011. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Science Technician First Class Jo A. Hoover, Sector St. Petersburg Prevention Department, Coast Guard; telephone 813–228–2191, e-mail Jo.A.Hoover@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone, as described in paragraph 34(g) of the Instruction, on the waters of Tampa Bay in St. Petersburg, Florida that will be enforced for less than two hours. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a temporary § 165.T07–0615 to read as follows:

§ 165.T07–0615 Safety Zone; Fourth Annual Chillounge Night St. Petersburg Fireworks Display, Tampa Bay, St. Petersburg, FL.

(a) *Regulated Area.* The following regulated area is a safety zone: all waters of Tampa Bay within a 200 yard radius of position 27°46'31''N, 82°37'38''W. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated area.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port St. Petersburg by telephone at 727–824–7524, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 9:30 p.m. until 10:45 p.m. on November 19, 2011.

Dated: July 8, 2011.

P.F. Martin,

Commander, U.S. Coast Guard, Acting Captain of the Port St. Petersburg.

[FR Doc. 2011–18794 Filed 7–25–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0786–201143; FRL–9443–8]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Regional Haze State Implementation Plan; Limited Reopening of the Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; limited reopening of the comment period.

SUMMARY: EPA is announcing a limited reopening of the public comment period for the proposed rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; State of Tennessee; Regional Haze State Implementation Plan.'' The proposed rule was initially published in the **Federal Register** on June 9, 2011. Written comments on the proposed rule were to be submitted to EPA on or before July 11, 2011 (30-day comment period). On June 29, 2011, and July 1, 2011, two Commenters requested that EPA extend the comment period for the June 9, 2011, Tennessee Regional Haze proposed rulemaking for 30 to 60 days in order to review the Cross-State Air Pollution Rule (CSAPR), which replaced the Clean Air Interstate Rule on July 6, 2011. The Commenters requested the extension in order to determine any potential impacts of the CSAPR on the June 9, 2011, proposed rule. EPA is now reopening the public comment period for 15 days from the date of publication of today's action for the limited purpose of public review and comment on the potential impacts of the final CSAPR on EPA's proposed rulemaking to approve Tennessee's Regional Haze State Implementation Plan (SIP).

DATES: The comment period for the proposed rule published on June 9, 2011 (76 FR 33662), is reopened. Comments must be received on or before August 10, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0786, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: scofield.steve@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2009–0786,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Steven Scofield, Acting Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2009–0786.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2009–0786. All documents in the docket are listed on 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 through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sara Waterson or Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Sara Waterson can be reached at telephone number (404) 562–9061 and by electronic mail at *waterson.sara@epa.gov.* Michele Notarianni can be reached at telephone number (404) 562–9031 and by electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 31, 2011, the EPA Region 4 Acting Regional Administrator signed a proposed rulemaking to approve, on a limited basis, the State of Tennessee's Regional Haze State Implementation Plan. This action was published in the **Federal Register** on June 9, 2011, (76 FR 33662) and provided a 30-day comment period. All written comments were due to EPA Region 4, as instructed in the proposed rule, on or before July 11, 2011. During the comment period, EPA received comments from two separate Commenters requesting that EPA extend the comment period suggesting a range of 30–60 days. The purpose of the Commenters' requests was to allow time to review the final CSAPR [1] and assess the correlation between the CSAPR and the Regional Haze requirements and, specifically, any potential impacts on the Tennessee Regional Haze SIP

[1] The final Cross-State Air Pollution Rule was signed by the EPA Administrator on July 6, 2011, and made available on the Internet at: *http://www.epa.gov/crossstaterule/pdfs/TR_070611_WEB.pdf.* The signed version is not the official version of this rule. For the purposes of compliance, the July 6, 2011, signed version will be replaced with a forthcoming **Federal Register** publication.

rulemaking. EPA has considered these requests and has decided to reopen the comment period for an additional 15 days from the date of publication of today's rulemaking.

This reopening is for the limited purpose of public review and comment on the potential impacts of the final CSAPR on EPA's proposed rulemaking to approve Tennessee's Regional Haze SIP. EPA does not anticipate any impacts from the CSAPR on the proposed rulemaking on the Tennessee Regional Haze SIP. As noted in the CSAPR, EPA has not conducted any technical analysis to determine whether compliance with the CSAPR would satisfy Regional Haze Best Available Retrofit Technology (BART)-related requirements for electric generating units (EGUs). For that reason, EPA has neither made any determinations nor established any presumptions that compliance with the CSAPR satisfies BART-related requirements for EGUs. EPA intends to undertake a separate analysis to determine if compliance with the CSAPR would provide sufficient reductions to satisfy BART requirements for EGUs in accordance with Regional Haze Rule requirements for alternative BART compliance options as soon as practicable following official promulgation of the CSAPR.

Dated: July 15, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

[FR Doc. 2011–18833 Filed 7–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0042; FRL–9279–4]

Revisions to the California State Implementation Plan, Northern Sierra Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Northern Sierra Air Quality Management District (NSAQMD), Sacramento Metropolitan Air Quality Management District (SMAQMD), and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from gasoline dispensing facilities, polyester resin operations, and spray booth facilities. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 25, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0042, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: David Grounds, EPA Region IX, (415) 972–3019, *grounds.david@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: NSAQMD Rule 215, SMAQMD Rule 465, and SCAQMD Rules 1132 and 1162. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. 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.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: February 15, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–18871 Filed 7–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2010–0812; FRL–8880–3]

RIN 2070–AJ83

Testing of Bisphenol A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: Bisphenol A (BPA) (Chemical Abstracts Service Registry Number (CASRN) 80–05–7), a high production volume (HPV) chemical, is a reproductive, developmental, and systemic toxicant in animal studies and is weakly estrogenic. EPA is providing this ANPRM to request comment on requiring toxicity testing to determine the potential for BPA to cause adverse effects, including endocrine-related effects, in environmental organisms at low concentrations. EPA is also seeking comment on requiring environmental testing consisting of sampling and monitoring for BPA in surface water, ground water, drinking water, soil, sediment, sludge, and landfill leachate

in the vicinity of expected BPA releases to determine whether environmental organisms may currently be exposed to concentrations of BPA in the environment that are at or above levels of concern for adverse effects, including endocrine-related effects. This ANPRM is directed only toward the environmental presence and environmental effects of BPA. EPA is working with the Department of Health and Human Services (HHS) on potential human health issues, but is not considering any additional testing specifically in regard to human health issues at this time.

DATES: Comments must be received on or before September 26, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0812, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2010–0812. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2010–0812. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* 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 electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Mary Dominiak, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8104; e-mail address: *dominiak.mary@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) or process BPA (CASRN 80–05–7). BPA is listed on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory (TSCA Inventory) under the name phenol, 4,4'-(1-methylethylidene)bis-. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (including importers) (NAICS codes 325, 32411), *e.g.,* chemical manufacturing and petroleum refineries of BPA.
- Plastics material and resin manufacturers (NAICS code 325211), *e.g.,* manufacturers and processors of BPA-based polycarbonate plastics and epoxy resins.
- Foundries (NAICS codes 331512, 331524, 331528), *e.g.,* steel investment foundries, aluminum foundries, and other non-ferrous foundries, except die-casting, using BPA in casting sands.
- Paint and coating manufacturers (NAICS code 325510), *e.g.,* manufacturers of epoxy-based paints and other coating products that may contain BPA.
- Paper recyclers (NAICS codes 322110, 322121, 3222), *e.g.,* pulp mills, paper (except newsprint) mills, and converted paper product manufacturers that may process waste thermal paper containing BPA.
- Materials recovery facilities (NAICS code 562920), *e.g.,* facilities separating and sorting recyclable materials that may handle thermal paper, polycarbonates, or food and beverage cans lined with BPA-based epoxy coatings.
- Custom compounders of purchased resins (NAICS code 325991), *e.g.,* facilities where resins are made from recycled polycarbonate plastics that may contain BPA.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

As a follow-up to the BPA Action Plan released on March 29, 2010 (Ref. 1), EPA is issuing this ANPRM under TSCA section 4(a) (15 U.S.C. 2603(a)) to solicit public input on the necessity for and best approach to obtain environmental effects, exposure, and pathway information relevant to a determination that BPA either does or does not present an unreasonable risk of injury to the environment. In particular, EPA requests comment on:

1. Whether EPA should propose requiring specific toxicity testing to more fully characterize the effects of BPA on environmental organisms at low concentrations.

2. Whether EPA should propose requiring environmental testing consisting of sampling and monitoring, particularly in the vicinity of reported releases of BPA into the environment, and what design and protocol it should use for such sampling and monitoring, in order to identify potential sources and pathways of exposure and determine the extent to which environmental organisms may be exposed to BPA concentrations of concern as determined by existing data and by additional studies that are either already underway or would be conducted under a test rule.

3. EPA additionally requests comment and supporting information regarding which TSCA section 4(a)(1) finding authority would be most appropriate for the purpose of a BPA test rule proposal, as discussed in Unit II.C. Any proposal would ultimately be based on EPA's assessment of the relevant information available at the time of proposal.

B. What testing is EPA considering in this ANPRM?

In this ANPRM, EPA is considering requiring both toxicity testing for environmental organisms exposed to BPA and environmental testing consisting of sampling and monitoring in the vicinity of reported BPA releases to measure its environmental presence. The toxicity testing is being considered to resolve existing uncertainties concerning the potential for BPA to elicit adverse effects in ecologically relevant species, including endocrine-related impacts that could occur at low doses. The environmental testing is being considered to resolve existing uncertainties concerning potential sources of and pathways leading to environmental exposures and to determine whether or not the concentrations to which organisms currently may be exposed in the environment are at or above levels of concern for adverse effects, including endocrine-related effects.

On May 17, 1985, EPA published in the **Federal Register** a proposed rule (50 FR 20691) to require human health and environmental testing in response to the TSCA Interagency Testing Committee's (ITC) 14th report published in the **Federal Register** issue of May 29, 1984 (49 FR 22389), which designated BPA for priority consideration for health and environmental effects. EPA proposed standard freshwater and marine acute fish and aquatic invertebrate toxicity tests, and freshwater aquatic plant toxicity tests. Test results were submitted in response to the proposal for freshwater and marine acute fish, acute aquatic invertebrate, and algal toxicity. EPA's final rule published in the **Federal Register** issue of September 18, 1986 (51 FR 33047) (1986 Final Rule), terminated the test rule process for environmental effects testing for BPA. At the time, EPA determined that the test data were adequate and that chronic freshwater organism testing was not needed because the LC_{50} values for the standard acute aquatic organism toxicity tests were greater than 1.0 parts per million (ppm) (1 milligram/Liter (mg/L)), and the ratios of 48-hour to 96-hour LC_{50} values were not greater than 2. Since the 1986 Final Rule, however, several studies on BPA have raised concerns about its environmental effects at concentrations less than 1.0 ppm (1 mg/L).

As stated in the BPA Action Plan (Ref. 1), EPA does not intend to initiate regulatory action under TSCA at this time on the basis of human health. EPA remains committed to protecting human health, but notes that most human exposure, including exposure to children, comes through food packaging materials under the jurisdiction of the Food and Drug Administration (FDA) in HHS. FDA, together with the Centers for Disease Control and Prevention (CDC) and the National Institute of Environmental Health Sciences (NIEHS), is investing in important new health studies in both animals and humans to better determine and evaluate the potential health consequences of BPA exposures. EPA will continue to coordinate closely with FDA, CDC, and NIEHS on this activity. To the extent that FDA may identify health concerns from BPA in food contact materials, EPA will work with FDA to identify and assess potential substitutes. Levels of exposure that may be identified by the ongoing review as being of concern to human health, including children's health, will affect the extent to which EPA would take additional action to address potential risks to human health resulting from uses within TSCA jurisdiction.

1. *What is currently known about the environmental hazard of BPA*? The toxicity of BPA has been studied extensively, as indicated in the multiple studies cited in the BPA Action Plan (Ref. 1).[1] There is general agreement

[1] EPA's response to the request for correction of the information provided in the Action Plan that was filed under the ''Agency's Information Quality Guidelines'' by the American Chemistry Council is

Continued

among multiple reviewers, including government regulatory agencies in the United States, Japan, the European Union (EU), and Canada, that BPA is a reproductive and developmental toxicant at doses in animal studies of ≥ 50 mg/kilogram-body weight (kg-bw)/day (delayed puberty in male and female rats and male mice; discussed in Refs. 2–9); ≥ 235 mg/kg-bw/day (reduced fetal or birth weight or growth early in life, effects on testis of male rats; Ref. 9); and ≥ 500 mg/kg-bw/day (possible decreased fertility in mice, altered estrous cycling in female rats, and reduced survival of fetuses; Ref. 9). Systemic effects (reduction in body weight, changes in relative organ weights, and increases in liver toxicity; Refs. 2–8) were observed at doses above 5 mg/kg-bw/day (identified as a no observed adverse effect level (NOAEL); lowest observed adverse effect level (LOAEL) of 50 mg/kg-bw/day). There are reports of endocrine-related low-dose effects on puberty and neurological development (brain, behavior; Ref. 9) at doses in animal studies as low as 2 microgram (μg)/kg-bw/day. There is disagreement in the scientific community at large about whether effects seen at doses in animals less than 1 mg/kg/day are meaningful and relevant to humans. FDA, together with NIEHS and CDC, are engaging in additional research to better determine and evaluate the potential human health consequences of exposures to BPA, including exposures at low doses (Ref. 10). EPA is working with FDA, NIEHS, and CDC on this ongoing research, and is not considering any additional testing specifically in regard to human health issues at this time.

Many studies have been conducted to determine potential effects of BPA exposure on invertebrates, fish, amphibians, reptiles, birds, and wild mammals, and a review is provided by Crain *et al.* (Ref. 11). In general, studies have shown that BPA can affect growth, reproduction, and development in aquatic organisms. Evidence of sub-lethal effects mediated through either endocrine or non-endocrine related mechanisms in fish, amphibians, reptiles, and invertebrate aquatic organisms has been reported at potentially environmentally relevant exposure levels lower than those required for acute toxicity. There is a widespread variation in reported values for these sub-lethal effects, but many fall in the range of 1 μg/L to 1 mg/L (Ref. 6; also, see individual studies noted in Table 2 of Unit II.B.2.).

The ecological hazard for BPA has been evaluated in three different risk assessments performed by the EU, Canada, and Japan (Refs. 7, 6, and 8), as summarized in Table 1 of this unit. The different methodologies, endpoints, and study results used by each country to derive their ecological values highlight the significant uncertainty in the estimated hazard values. Japan concluded that ''the current exposure levels of BPA will not pose unacceptable risks to the local populations of aquatic life, particularly fish'' (Ref. 8). In contrast, the EU concluded that although the predicted exposure concentrations were significantly below its hazard values, there was a need for further information and/or testing on such organisms as freshwater snails (Ref. 7).

Canada used a study (Ref. 12) that reported reduced sperm quality and delayed ovulation in brown trout at a very low concentration in water (1.75 μg/L). Other effects such as the induction of intersex (or testes-ova in males and females), decreased spermatogenesis, induction of vitellogenin, delayed or ceased ovulation, or histological liver changes were also reported in other studies referenced in the EU and Japanese hazard evaluations. However, because there were no standardized test guidelines or risk assessment guidance for evaluating some of these endocrine-related effects at the time of these assessments, the EU and Japan set ecotoxicological hazard values based on conventional effects (mortality and reproductive effects) from standardized studies. In contrast, Canada concluded in its hazard characterization that:

> [c]onsidered together, the data provide strong evidence that bisphenol A is capable of eliciting adverse effects: (1) following prolonged exposure at levels below those usually seen to elicit effects in standard toxicity tests (*i.e.,* tests based on recognized methods which evaluate endpoints such as survival, reproduction and growth); (2) following brief low-dose exposure, particularly at sensitive developmental stages, with effects apparent later in the life cycle; (3) on filial generations following parental exposure; and (4) using more than one mode of action.
> (Ref. 6)

Canada concluded that BPA concentrations in water have the potential to cause adverse effects on populations of pelagic organisms in Canada and concentrations in biota have the potential to cause adverse effects in populations of wildlife in Canada, but that there is a low risk of direct adverse effects to sediment organisms and to avian wildlife species in Canada. In the conclusion of its risk assessment, Canada stated that it is considered appropriate to apply a precautionary approach when characterizing risk, observing ''it is concluded that bisphenol A is entering the environment in a quantity or concentration or under conditions that have or may have an immediate or long-term harmful effect on the environment or its biological diversity'' (Ref. 6).

TABLE 1—SUMMARY OF BISPHENOL A ECOLOGICAL VALUES

Country	Predicted no effect concentrations (microgram/Liter (μg/L)) [1]	Endpoints
European Union	1.5	The predicted no effect concentration (PNEC) for aquatic organisms (derived by using a statistical analysis of data from available data on freshwater and marine aquatic organisms (in this case, 16 different studies, unpublished and published, from 10 different taxonomic groups)) to arrive at a value of 7.5 μg/L, which is divided by an uncertainty factor of 5, resulting in a PNEC of 1.5 μg/L (Ref. 7).
Canada	0.175	This PNEC was derived by using a lowest observed effect concentration (LOEC) of 1.75 μg/L for reduced semen quality and delayed ovulation in a brown trout study (Lahnsteiner *et al.* 2005) and applying an uncertainty factor of 10 (Ref. 6).

available at *http://www.epa.gov/quality/informationguidelines/iqg-list.html.*

TABLE 1—SUMMARY OF BISPHENOL A ECOLOGICAL VALUES—Continued

Country	Predicted no effect concentrations (microgram/Liter (μg/L)) [1]	Endpoints
Japan	1.6	The PNEC was derived by using the 16 μg/L no effect concentration (NOEC) for egg hatchability in fathead minnows from the unpublished 3-generation study by Sumpter, *et al.* (2001) multi-generation fish study and dividing by an uncertainty factor of 10 (Ref. 8).

[1] In the European Union, Canada, and Japan, a predicted no effect concentration (PNEC) is compared directly with an exposure value to evaluate risk. If the ratio of environmental concentration to PNEC is less than one, the risk is generally considered acceptable. As noted in the table, countries use different approaches for generating PNECs, and the precise values may differ even when based on the same studies.

EPA considers that the uncertainty demonstrated by these divergent opinions concerning interpretation of the results of existing environmental toxicity studies, particularly studies addressing potential effects at low levels of exposure, may indicate further testing is necessary to resolve the question of whether or not BPA presents an unreasonable risk of injury to the environment on the basis of those effects. This is due to the combination of the existence of measured values, as discussed in Unit II.B.4. and as shown in that unit's Table 3, for BPA in U.S. surface waters at a mean-concentration range of up to 1.78 μg/L (parts per billion (ppb)) and a single-maximum concentration of 12 μg/L (ppb); in ground water at a mean-concentration range of up to 1.9 μg/L (ppb) and a maximum concentration of 2.55 μg/L (ppb); and in freshwater sediments at a median concentration of 0.6 μg/kg (ppb) dry weight and a maximum concentration of 140 μg/kg (ppb) (see Table 3 in Unit II.B.4.), and the existence of many hazard studies describing a variety of effects in aquatic organisms at some of these concentrations (see Table 2 in Unit II.B.2.), leaving little or no room for a reasonable or acceptable margin of exposure.

In order to assess the potential for BPA to harm the environment in the United States, EPA considers it important to address two basic areas of inquiry relevant to identifying the hazard and exposure components of a risk analysis:

a. What additional hazard information is needed to fully characterize the effects of BPA in environmental organisms at low doses and potentially environmentally relevant concentrations?

b. What levels of BPA are present in the environment, particularly in areas where environmental exposures are likely to be highest (*e.g.,* near BPA manufacturing facilities, polycarbonate and epoxy resin manufacturing and processing facilities, foundries, landfills, wastewater treatment plants (WWTPs), and other locations associated with uses and/or releases of BPA)?

2. *What additional hazard information is needed on the effects of BPA on environmental organisms?* EPA performed a literature search to identify relevant scientific information to assess the acute and chronic toxicity of BPA to environmental organisms from 2007 [2] to the present. A total of 468 articles were found (Ref. 13), of which 30 were found to be of some relevance (Ref. 14). Since thorough analyses of acute and chronic toxicity for ''conventional endpoints'' (which generally address immediate effects on survival or reproduction) had already been conducted for BPA by Canada, the EU, and Japan (Refs. 6–8), EPA performed a more detailed evaluation of the scientific literature for sub-lethal effects at lower concentrations (< 100 μg/L). These sub-lethal effects in both vertebrates and invertebrates could be mediated either through endocrine or non-endocrine-related mechanisms. There are many studies indicating such sub-lethal effects from BPA exposures at levels that, based on the information discussed in Unit II.B.4., appear to be potentially environmentally relevant concentrations because they may occur in the environment. Some of these studies are included in Table 2 of this unit.

TABLE 2—SUMMARY OF REPORTED HAZARD EFFECTS OF BISPHENOL A AT POTENTIALLY ENVIRONMENTALLY RELEVANT CONCENTRATIONS

Test organism	Endpoint	Effect concentrations (microgram/Liter (μg/L))	References (Listed in Ref. 14)
Amphibians:			
Xenopus laevis (African clawed frog).	Inhibited metamorphosis via T3 pathways	22.8	Heimeier *et al.,* 2009.
Xenopus laevis	High ratio of females to males—1st study	23	Levy *et al.,* 2004.
Xenopus laevis	High ratio of females to males—2nd study	only at 23	Levy *et al.,* 2004.
Avian:			
Gallus domesticus (chicken)	Delayed development of wattle, comb, and testes.	2	Furuya *et al.,* 2006.
Gallus domesticus	Inhibited development of seminiferous tubuli and spermatogenesis.	20	Furuya *et al.,* 2006.
Fish:			
Dicentrarchus labrax (seabass).	Increased vitellogenin production	10	Correia *et al.,* 2007.

[2] The starting date of 2007 was used to allow for some overlap between the thorough searches done by Canada, the EU, and Japan.

TABLE 2—SUMMARY OF REPORTED HAZARD EFFECTS OF BISPHENOL A AT POTENTIALLY ENVIRONMENTALLY RELEVANT CONCENTRATIONS—Continued

Test organism	Endpoint	Effect concentrations (microgram/Liter (μg/L))	References (Listed in Ref. 14)
Misgurnus anguillicaudatus (Chinese loach).	Increased vitellogenin production	10	Lv *et al.,* 2007.
Orizias latipes (medaka)	Egg hatchability delayed	13 only	Yokota *et al.,* 2000.
Orizias latipes	Loss of testicular structure, increased fibrotic tissue; decreased sperm cells.	50	Metcalfe *et al.,* 2001.
Orizias latipes	Vitellogenin production	10	Kashiwada *et al.,* 2002.
Orizias latipes	Increased female proteins (*i.e.,* vitellogenin)	10	Tabata *et al.,* 2001.
Orizias latipes	Decreased egg hatching in 2nd generation	2 only	Japanese Ministry of the Environment, 2006.
Orizias latipes	Increased male hepatosomatic index	49.7	Japanese Ministry of the Environment, 2006.
Pimephales promelas (fathead minnow).	Increased vitellogenin production	52.8	Rhodes *et al.,* 2007 (unpublished).
Xiphophorus helleri (swordtail fish).	Reduced sword tail length	20	Kwak *et al.,* 2001.
Cyprinus carpio (carp)	Oviduct formation in males	32	Bowmer & Gimeno, 2001 (unpublished).
Cyprinus carpio	Altered sex steroid levels; alterations in testes structure; oocyte atresia.	1	Mandich *et al.,* 2007.
Invertebrates:			
Bellamya purificata (snail)	Enzyme activities in gills and digestive glands.	1	Li *et al.,* 2008.
Marisa cornuarietis (ramshorn snail).	Superfeminization	1	Oehlmann *et al.,* 2000.
Marisa cornuarietis	Increased egg and clutch production per female.	0.25 at 20 °C	Oehlmann *et al.,* 2006.
Marisa cornuarietis	Increased egg production	0.25 at 27 °C	Oehlmann *et al.,* 2006.
Marisa cornuarietis	Increased clutch production	5 at 27 °C	Oehlmann *et al.,* 2006.
Potamopyrgus antipodarum (snail).	Increased growth/embryo production	5 only	Jobling *et al.,* 2004.
Potamopyrgus antipodarum	Unshelled embryos	30	Duft *et al.,* 2003.
Potamopyrgus antipodarum	Increased embryo production	1	Duft *et al.,* 2003.
Nucella lapillus (marine snail)	Superfeminization; reduced sperm/penis length/prostrate gland in males.	1	Oehlmann *et al.,* 2000.
Acartia tonsa (copepod)	Increased egg production	20 (day 10 only)	Andersen *et al.,* 1999.
Tigriopus japonicus (intertidal copepod).	Delayed development (Parent)	0.1	Marcial *et al.,* 2003.
Tigriopus japonicus	Delayed development (F1)	0.01	Marcial *et al.,* 2003.
Chironomus riparius	Delayed emergence (2nd generation)	0.078	Watts *et al.,* 2001.
Chironomus riparius	Mouthpart deformities	0.01	Watts *et al.,* 2003.

There is debate in the scientific literature on how best to interpret these low-dose, sub-lethal effects of BPA and other chemicals on environmental organisms. EPA is concerned that these sub-lethal effects may be having a detrimental effect on populations of aquatic organisms over time based on the reported increased susceptibility of subsequent generations exposed to BPA in multi-generation invertebrate and fish studies. For example, in the intertidal copepod (*Tigriopus japonicus*), delayed development was reported in the first generation at 0.1 μg/L, but at a 10-fold lower concentration of 0.01 μg/L in the next generation (Ref. 15). In the freshwater midge (*Chironomus riparius*), the first generation did not have a significant delay in emergence time from the egg, but in the second generation emergence was delayed at 0.08 μg/L (Ref. 16). Egg hatchability decreased in fathead minnows (*Pimephales promelas*) at 640 μg/L in the first (F1) generation, then at 160 μg/L in the second (F2) generation (Ref. 17). Although the mechanisms of action leading to effects may be different for vertebrate and invertebrate organisms, this suggests the potential for increasing developmental and reproductive effects in populations of aquatic organisms that have repeated exposures to BPA for generations, even at very low concentrations.

Testing with BPA has been extensive at sub-lethal concentrations, but the studies with effects across multiple species generally have flaws associated with them, including lack of analytical monitoring, small sample size, inadequate replication, or use of inappropriate statistical analyses leading to incorrect conclusions of study results. Studies in ramshorn snails, for example, resulted in superfeminization (*e.g.,* the formation of additional female organs, enlarged accessory sex glands, gross malformations of the pallial oviduct, and a stimulation of egg and clutch production) at very low concentrations in one lab (Ref. 18), but those results were not found in studies by other researchers (Refs. 19–21).

In addition, in some studies, BPA demonstrated effects at very low concentrations, but no effects were observed at the higher test concentrations. For example, tadpoles exposed to 2.3, 23, and 230 μg/L of BPA (Ref. 22) before metamorphosis had an increased female to male ratio at 23 μg/L only. These types of anomalous responses have been reported across multiple species of fish and invertebrates for BPA and are characteristic of endocrine-active

chemicals. They suggest inhibition of reproduction and development at low concentrations and overcompensation by the organism at higher concentrations in response to a toxicant (Ref. 23).

It is difficult to interpret this information in a regulatory context, because the scientific methods employed in individual academic settings to test a hypothesis are not necessarily geared toward meeting or establishing generally applicable guidelines for evaluating ecotoxicity and setting corresponding regulatory limits or controls. In terms of environmental toxicity, EPA considers the currently available research as evidence that BPA has the potential to interact with the estrogen hormone system. There is some evidence that BPA is also active via the thyroid hormone pathway in amphibians and fish (Refs. 24 and 25). More recent evidence indicates that BPA also acts as an androgen receptor antagonist in both mammals and fish (Ref. 26). There are currently efforts underway by EPA's Office of Science Coordination and Policy (OSCP) through the Endocrine Disruptor Screening Program (EDSP) and the Organization for Economic Cooperation and Development (OECD) Endocrine Disrupter Testing and Assessment Work Group (EDTAWG), among others, to determine the best approach to evaluate and assess such effects (Refs. 27–29).

EPA is inviting comment on the need to further determine the hazard of BPA to various ecological species. The purpose of further testing would be to produce high quality data that could be used for risk assessment purposes for any adverse reproductive or developmental effects in different species that might result from the interactions identified through the available research.

3. *What are the issues for comment concerning toxicity testing*? EPA invites comment on whether and what testing should be required to further describe the hazard of BPA to various ecological species to resolve the low dose effects issue. EPA particularly invites comment on the following, for which little or no clarifying hazard information appears to be currently available or for which much of the available data have been derived from studies of questionable quality or uncertain interpretation:

a. Effects of BPA on fish in long-term tests, including those that encompass multiple generations.

b. Effects of BPA on amphibians at sensitive life stages, specifically metamorphosis (thyroid effects) and sexual development/differentiation (hypothalamic-pituitary-gonadal axis effects).

c. Effects of BPA on birds over multiple generations.

d. Effects of BPA on aquatic invertebrate species.

EPA further invites comment on the availability of current test guidelines that could help address these issues. This may include, for example, considering the draft recommendations concerning aquatic life criteria for contaminants of emerging concern (Ref. 30). Additionally, EPA is inviting the public to describe and define where they believe there are data gaps concerning the environmental toxicity of BPA, especially at low concentrations, or whether and on what basis they believe the current data are sufficient to determine whether BPA does or does not present an unreasonable risk of injury to the environment.

4. *What levels of BPA are present in the U.S. environment*? BPA is present in the environment as a result of direct releases from manufacturing or processing facilities (Ref. 31). BPA also may be present in the environment as a result of fugitive emissions during processing and handling, release of unreacted monomer from products (Ref. 9), or possibly from degradation of products under certain conditions. In addition, although no environmental studies on thermal paper have been done in the United States, based on information from EPA's review of European and Japanese studies, the use of unconjugated BPA in thermal paper also may contribute to environmental releases of BPA from paper manufacturing and recycling plants and to the presence of BPA in the stream of recycled paper used in toilet paper, paper tableware, and other products, and may contribute to the presence of BPA in landfills because paper products are a major contributor to the U.S. solid waste stream (Refs. 7, 32–36).[3]

Significant research has been done to document widespread human population exposures to BPA in the United States using biomonitoring (Refs. 37–41). Although these studies and reports indicate that most people in the United States have measurable levels of BPA in their bodies, these data do not identify the relative source contributions to BPA exposure. Researchers generally accept that food contact uses of materials containing BPA, such as polycarbonate bottles or epoxy linings in food and beverage cans, are a likely major source of human exposure, but the relative contributions of food contact uses, potential TSCA uses, or other environmental sources cannot be extrapolated reliably from these existing data. For information about the multi-agency effort to evaluate the potential human health consequences of BPA exposures, see the discussion in Unit II.B.

According to the Toxics Release Inventory (TRI) Database, total release of BPA in the United States in 2007 was 1,132,062 pounds (lbs), with releases of 122,965 lbs to air, 6,246 lbs to water, 14,972 lbs released on-site to land, and 684,638 lbs transferred off-site to land. An additional 32,928 lbs were reported as off-site water transfer to Publicly Owned Treatment Works (POTWs), with another 2,759,705 lbs transferred to incineration (Ref. 31).

Some information is available for BPA concentrations in U.S. water and other environmental media (see Table 3 in Unit II.B.4., providing values from the U.S. studies cited in this discussion). Most environmental monitoring results show that the concentrations of BPA in surface water bodies are lower than 1 μg/L (ppb), mainly due to its partitioning and biodegradability properties (Ref. 42). BPA was detected at a median concentration of 0.14 μg/L (ppb) and a maximum concentration of 12 μg/L (ppb) in 41.2% of 85 samples collected from U.S. streams in 1999 and 2000 (Ref. 43). The maximum concentration of 12 μg/L (ppb) was much higher than any of the other samples reported in the study; the next highest concentration reported was 5.2 μg/L (ppb), and as indicated by the median concentration of 0.14 μg/L (ppb), BPA concentration in other U.S. waters was much lower. A recent review of reports of BPA in surface water found that BPA was reported in 26 studies in North America (2 in Canada and 24 in the United States) with detection in 80% (852 of 1,068) of surface water samples. The median concentration reported was 0.081 μg/L (ppb) and the 95th percentile concentration was 0.47 μg/L (ppb) (Ref. 44).

Two studies have addressed individual WWTPs in two different parts of the United States. In 2001 and 2002, BPA was not detected above the detection limit of 0.0001 μg/L (ppb) in Louisiana in effluent from a WWTP, in samples collected from surface waters in Louisiana, or in drinking water at various stages of treatment at plants in Louisiana (Ref. 45). A 2008 study

[3] Recent studies also indicate thermal paper may contribute directly to human exposure to BPA through dermal contact. In one U.S. study, for example, pregnant women who worked as cashiers, who presumably had frequent contact with thermal paper used in cash register receipts, had the highest urinary BPA concentrations compared with pregnant women in other occupations (Ref. 37).

sampled BPA in treated wastewater from the East Bay Municipal Utilities WWTP in Oakland, California, and in a variety of locations that discharge to this WWTP (Ref. 46). This study reported detecting (limit of detection = 0.25 µg/L (ppb)) BPA in two of three treated wastewater samples at 0.38 and 0.31 µg/L (ppb). It also reported detecting BPA in wastewater generated by a pharmaceutical manufacturer (0.295 µg/L (ppb)), an industrial laundry (21.5 µg/L (ppb)), and a paper products manufacturer (0.753 µg/L (ppb)).

While U.S. studies on wastewater are limited to only two State locations, a Canadian study published in 2000 reported BPA concentrations ranging from 49.9 to 0.031 µg/L (ppb) in sewage influent and effluent (generally < 1 µg/L (ppb) in the influent and < 0.3 µg/L (ppb) in the effluent) and from 36.7 to 0.104 µg/g (ppm) in raw and digested sewage sludge from multiple WWTPs in Canada (Ref. 47). The same authors reported that BPA contamination was detected in 100% of sewage samples from 31 WWTPs across Canada with concentrations ranging from 0.080 to 4.98 µg/L (ppb) (median 0.329 µg/L (ppb)) for the influent and from 0.010 to 1.08 µg/L (ppb)(median 0.136 µg/L (ppb)) for the effluent (Ref. 48). Based on comparison of influent and effluent levels, they estimated that BPA in the influent was removed by the sewage treatment process with a median reduction rate of 68%. BPA was detected in sludge samples at concentrations ranging from 0.033 to 36.7 µg/g (ppm), on a dry weight basis. The authors also reported a wide range of BPA in wastewater discharges from industrial facilities in the Toronto, Canada, area, with concentrations ranging from 0.23 to 149.2 µg/L (ppb). Higher BPA levels in wastewater were associated with facilities producing chemicals and chemical products and packaging and paper products, and with commercial dry cleaning establishments. BPA concentrations in pulp and paper mill sludge ranged from < 0.02 (below detection limit) to 3.33 µg/g (ppm), with a median value of 0.076 µg/g (ppm), on a dry weight basis (Ref. 48). EPA notes that U.S. wastewater treatment conditions and industrial and commercial discharges may differ from what was found in Canada, but considers this Canadian study to be informative.

Municipal wastewater treatment produces solid byproducts, commonly referred to as sewage sludge. After additional treatment to meet regulatory standards for pathogen, nutrient, and metal content, this treated sewage sludge, now classified as biosolids, may be disposed of by land application; biosolids may also be incinerated or disposed of in landfills. A U.S. study published in 2006 measured BPA in 9 treated biosolids products from WWTPs in 7 States and found that all contained between 1,090 and 14,400 µg/kg (ppb) (median 4,690 µg/kg (ppb)) (Ref. 49). A 2008 study reported BPA in treated biosolids from a municipal U.S. WWTP at 4,600 µg/kg (ppb) and reported 81 µg/kg (ppb) in soil that received the land-applied biosolids (Ref. 50). That study detected BPA at 81 µg/kg (ppb) in earthworms living in treated soil. The authors also reported detecting 147 µg/kg (ppb) in a nearby ''control'' soil that did not receive treatment with biosolids. That anomalous result was not explained.

In 2000, the U.S. Geological Survey (USGS) collected samples from 47 ambient ground water sites (not drinking water wells) in 18 States and analyzed them for 65 organic wastewater contaminants. BPA was detected in 29.8% of the sampled ground water sites, with a mean detected concentration of 1.78 µg/L (ppb) and a range of 1.06 to 2.55 µg/L (ppb). BPA was among the top 5 most frequently detected organic compounds in this study (Refs. 51 and 52).

In the summer of 2001, the USGS collected samples from 74 sources of raw, untreated, drinking water in 25 States and Puerto Rico, in areas that were known or suspected to have at least some human and/or animal wastewater sources in upstream or upgradient areas. These sources comprise 25 ground water and 49 surface water sources of drinking water serving populations ranging from one family to more than 8 million people. BPA was detected in 9.5% of these samples at a reporting level of 1 µg/L (ppb). The maximum concentration measured in these samples was 1.9 µg/L (ppb) (Refs. 51 and 53).

Landfill leachate from one U.S. study reported maximum BPA concentrations of 1.7 µg/L (ppb) in landfill leachate and 1.4 µg/L (ppb) in the receiving ground water plume at a landfill on Cape Cod, Massachusetts, that was known to be leaking (Ref. 54). Data for other landfill sites in the United States were not available, and this single point is not representative of the country. Landfill leachate from other countries contained more than 500 µg/L (ppb) of BPA (Ref. 42). Studies conducted at Japanese landfills resulted in maximum untreated leachate concentrations of 17,200 µg/L (ppb) and treated leachate concentrations of 5.1 µg/L (ppb) (Ref. 11).

Wilson *et al.* (Ref. 55) reported that BPA concentrations in soil samples taken from outdoor play areas of homes and daycare centers ranged from 4–14 ppb dry weight, with means of 6–7 ppb dry weight. Klecka *et al.* (Ref. 44) reported a median concentration of 0.6 ppb BPA in North American freshwater sediments, including non-detected samples; BPA concentrations in samples from the United States ranged from 1.4 to 140 ppb dry weight. Levels in U.S. marine sediments were reported to have a median of 3.5 ppb of BPA and to range from 1.5 to 5 ppb dry weight (Ref. 56).

TABLE 3—U.S. REPORTED ENVIRONMENTAL CONCENTRATIONS OF BISPHENOL A

Location	Mean or range of means (parts per billion (ppb))	Range (ppb)	References
Surface Water	<0.0001 to 0.14*	<0.0001 to 12	Barnes *et al.,* 2008a (Ref. 51). Boyd *et al.,* 2003 (Ref. 45). Boyd *et al.,* 2004 (Ref. 57). Focazio *et al.,* 2008 (Ref. 53). Klecka *et al.,* 2009 (Ref. 44). Kolpin *et al.,* 2002 (Ref. 43). Staples *et al.,* 2000 (Ref. 58). Zhang *et al.,* 2007 (Ref. 59).
Ground Water	NR** to 1.78†	<0.003 to 2.55	Barnes *et al.,* 2008a (Ref. 51). Barnes *et al.,* 2008b (Ref. 52). Focazio *et al.,* 2008 (Ref. 53). Rudel *et al.,* 1998 (Ref. 54).

TABLE 3—U.S. REPORTED ENVIRONMENTAL CONCENTRATIONS OF BISPHENOL A—Continued

Location	Mean or range of means (parts per billion (ppb))	Range (ppb)	References
Drinking Water	<0.0001	<0.0001 to 0.42	Boyd *et al.,* 2003 (Ref. 45). Stackelberg *et al.,* 2004 (Ref. 60).
Wastewater	<0.0001	<0.0001 to 25	Boyd *et al.,* 2003 (Ref. 45). Drewes *et al.,* 2005 (Ref. 61). Jackson and Sutton, 2008 (Ref. 46). Rudel *et al.,* 1998 (Ref. 54) Tsai, 2006 (Ref. 42).
Soils	6 to 7	4 to 147	Kinney *et al.,* 2008 (Ref. 50). Wilson *et al.,* 2003 (Ref. 55).
Sediment, Fresh	0.6* ††	1.4 to 140 ††	Klecka *et al.,* 2009 (Ref. 44).
Sediment, Marine	3.5*	1.5 to 5.0	Stuart *et al.,* 2005 (Ref. 56).
Biosolids	4,600 to 4,690*	1,090–14,400	Kinney *et al.,* 2006 (Ref. 49). Kinney *et al.,* 2008 (Ref. 50)

* Value is median.
** Not reported (NR).
† Mean of values above reporting limit (1 ppb).
†† Median value includes non-detected values below the minimum detection limit, while the reported range includes only detected values.

Although there is disagreement in interpreting some of the effects observed in studies performed to date with BPA, as described in Unit II.B.1. and 2., a comparison of the range of the effect levels observed in many studies and the predicted no effect concentration (PNEC) values used in three international regulatory risk assessments (0.175 to 1.6 µg/L, Table 1 of Unit II.B.1.) with measured concentrations in some U.S. waters and sediments, which included values as high as 12 µg/L (ppb) (surface water), 2.55 µg/L (ppb) (ground water), and 140 ppb sediment (freshwater sediment) (Table 2 of Unit II.B.2.), indicate possible risk of injury to aquatic organisms. The single available measurement of BPA in leachate from one U.S. landfill site is not sufficient to represent or characterize the United States as a whole, and landfill leachate data from other countries suggest that BPA concentrations in leachate may be significantly higher than concentrations in surface water bodies. The direct exposure pathway from wastewater to environmental organisms, along with the widespread detection of BPA in WWTP sludges, further suggest that land application of WWTP sludges may be a significant environmental exposure pathway that needs to be better understood.[4]

Although most currently available environmental monitoring results show that the concentrations of BPA in U.S. water bodies are lower than 1 µg/L (ppb) (median concentration of 0.14 µg/L (ppb)), these environmental measurements represent isolated snapshots in time. Because these results come from a variety of studies designed for very different purposes and conditions (for example, laboratory analytical development contrasted with field monitoring), the data are not readily comparable and cannot be assembled into a nationally or regionally representative picture. Particularly in light of the corresponding uncertainties described in Unit II.B.1. and 2., concerning potential BPA hazards at low doses, the existing data do not allow EPA to determine how many areas may exceed potential concentrations of concern, how often or how long such concentrations may be exceeded, or the sources or pathways leading to BPA presence in the environment from manufacturing, processing, distribution in commerce, use, or disposal that may result in human and environmental exposures. EPA considers that these existing data would not be sufficient to determine whether or not an unreasonable risk to the environment exists. To help resolve these uncertainties, EPA is considering requiring that manufacturers and processors of BPA conduct environmental testing consisting of targeted sampling and monitoring of surface water, ground water, sediment, soil, landfill leachate, and drinking water on and adjacent to their properties, specifically in the vicinity of manufacturing facilities and such processing facilities as foundries, WWTPs, paper and plastics recycling facilities, and other sources of BPA releases as identified through TRI reporting and other information. These test data could also help guide development of effective risk management actions if it should be determined that activities involving BPA present an unreasonable risk of injury to aquatic or other environmental systems.

Fully understanding exposure pathways and in particular the magnitude, frequency, and duration of exposure could require a nationwide survey of the occurrence of the chemical in environmental media associated with production, processing, use, disposal, and recycling facilities. However, at this time, EPA is proposing that selected monitoring of a more limited scope be conducted to help identify the most likely locations of high exposure and the sources and pathways of exposure, to determine whether BPA may be present in those locations at concentrations that pose a risk of concern to aquatic or other systems. Monitoring of aquatic sites and sediments near releases (effluents and sludge) from manufacturing and processing sites (including on-site WWTPs) reporting high releases under TRI or associated with high releases identified from other information, as well as monitoring of sites that receive runoff from landfills, would be included.

EPA believes these targeted monitoring data may provide information relevant both to the characterization of environmental risk and to the potential focus of future risk management activities such as those under TSCA section 6, if the data indicate such activities are warranted. EPA also considers these data would further inform the issue of potential human exposure levels attributable to sources other than the direct food

[4] EPA's response to the request for correction of the information provided in the Action Plan that was filed under the ''Agency's Information Quality Guidelines'' by the American Chemistry Council is available at *http://www.epa.gov/quality/informationguidelines/iqg-list.html.*

contact uses believed to be the principal source of human exposure, which are regulated by the FDA. As noted earlier in Unit II.B., EPA is working with FDA, NIEHS, and CDC on additional research to better determine and evaluate the potential human health consequences of exposures to BPA, including exposures at low doses. Levels of exposure that may be identified by FDA as being of concern to human health, including children's health, would affect the extent to which EPA would take additional action to address potential risks to human health resulting from uses within TSCA jurisdiction, but EPA is not considering any additional testing specifically in regard to human health issues at this time.[5]

In order to be useful to an investigation of potential environmental risks posed by BPA, environmental testing must be representative and of known quality. To accomplish this, data should be collected using approved or recognized sampling, preparation, and analytical techniques. Appropriate quality assurance and quality controls also should be incorporated in the protocols for collection and analyses.

A further complicating factor in the assessment of potential environmental risks posed by BPA is that organisms in the environment, rather than being exposed to a single chemical at a time, are likely to be exposed simultaneously to multiple chemicals. The presence of other endocrine-active chemicals, including other estrogenic chemicals, for example, could affect the potential for effects on environmental organisms. It may be useful, when monitoring for BPA, to identify the total estrogenicity of a sample along with the amount of BPA present.

Potential methodologies and protocols for use in monitoring programs may include ASTM D7574–09 Standard Test Method for Determination of Bisphenol A in Environmental Waters by Liquid Chromatography/Tandem Mass Spectrometry (Ref. 62); ASTM D5730–04 Standard Guide for Site Characterization for Environmental Purposes With Emphasis on Soil, Rock, the Vadose Zone and Ground Water (Ref. 63); EPA Method 8270D (SW–846), Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 4 (Ref. 64); and other methods cited and described in such publications as Barnes *et al.* (2008) (Ref. 51) and Focazio *et al.* (2008) (Ref. 53).

[5] EPA notes, however, that information obtained on the environmental presence of BPA would be relevant to understanding the environmental component of human exposures.

5. *What are the issues for comment concerning environmental testing consisting of sampling and monitoring*? EPA particularly invites comment on:

a. The extent and type of environmental testing that may be sufficient to characterize the environmental presence of BPA.

b. The extent and type of environmental testing that may be sufficient to understand sources of and exposure from the high concentrations of BPA found in treated biosolids from WWTPs.

c. Whether environmental testing should be conducted now, or should be tiered to occur after the uncertainties associated with the hazards of BPA at low concentrations in the environment have been resolved.

d. The locations where such environmental testing should be undertaken, such as manufacturing, processing, recycling, foundry, and other use, treatment, and disposal sites identified with BPA releases reported under TRI or other information.

e. The media (*e.g.,* soil, sediment, sludge, WWTP influent and effluent, landfill leachate, drinking water, surface water, ground water) to be sampled at each such site.

f. Which parties should be required to conduct the testing and/or be potentially responsible for providing reimbursement to those who conduct specific tests.

g. The appropriate methods and protocols to use in such a environmental testing program.

h. Whether such an environmental testing program should include measurements for the total estrogenicity of samples collected as well as for the concentration of BPA, and what methods and protocols may be suitable for generating and interpreting such data.

i. Whether and what additional environmental testing activities may be necessary to understand and characterize non-food-contact uses, sources, and environmental pathways that may contribute to exposure to BPA. Though, as indicated in Unit II.B., the current focus of this ANPRM is on environmental effects, this information would inform the multi-agency effort to evaluate the potential human health consequences of BPA exposures.

j. Other information that may provide insight into sources and pathways of environmental and human exposure to BPA released into the environment. Though, as indicated in Unit II.B., the current focus of this ANPRM is on environmental effects, this information would inform the multi-agency effort to evaluate the potential human health consequences of BPA exposures.

k. The cost and economic feasibility of such environmental testing, for the different types of sites.

C. What is the agency's authority for taking this action?

EPA is issuing this ANPRM on certain toxicity testing and on certain environmental testing consisting of sampling and monitoring for the chemical substance BPA under TSCA section 4(a) (15 U.S.C. 2603(a)).

Section 2(b)(1) of TSCA (15 U.S.C. 2601(b)) states that it is the policy of the United States that ''adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture [which is defined by statue to include import] and those who process such chemical substances and mixtures[.]'' To implement this policy, TSCA section 4(a)(1) provides that EPA shall require by rule that manufacturers or processors or both of chemical substances and mixtures conduct testing, if the Administrator finds in a final rule that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substances or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data and

(C) in the case of a mixture, the effects which the mixture's manufacture, distribution in commerce, processing, use or disposal or any combination of such activities may have on health or the environment may not be reasonably and more efficiently determined or predicted by

testing the chemical substances which comprise the mixture[.]

(15 U.S.C. 2603(a))

If EPA in a final rule makes an appropriate finding under TSCA section 4(a)(1)(A) or (B) for a chemical substance or mixture, the Administrator shall require that testing be conducted on that chemical substance or mixture. The purpose of the testing would be to develop data with respect to the health and environmental effects for which there is an insufficiency of data and experience, and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of the substance or mixture, or any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment. As indicated in Unit II.A.3., EPA requests comment and supporting information regarding which TSCA section 4(a)(1) finding authority would be most appropriate for the purpose of a BPA test rule proposal. Any proposal would ultimately be based on EPA's assessment of the relevant information available at the time of proposal.

Once the Administrator has made the relevant findings under TSCA section 4(a), EPA may require any health or environmental effects testing for which data are insufficient and which are necessary to develop the data. EPA need not limit the scope of testing required to the factual basis for the TSCA section 4(a)(1)(A)(i) or (B)(i) findings as long as EPA also finds that there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and that testing is necessary to develop such data. This approach is explained in more detail in EPA's TSCA section 4(a)(1)(B) Final Statement of Policy (B Policy) published in the **Federal Register** issue of May 14, 1993 (58 FR 28736, 28738–28739).

Authority for requiring sampling and monitoring for a chemical substance or mixture can be found within TSCA section 4. Section 4(a) of TSCA authorizes EPA to require the development of data ''which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture, or that any combination of such activities, does or does not present an unreasonable risk of injury to health and the environment.'' The extent to which such activities may affect health or the environment is dependent in part upon the human and environmental exposures to the chemical substance occasioned by those activities. As an example, TSCA section 4(a)(2)(A) specifically addresses testing for persistence of a substance. Testing to identify where and in what concentrations a chemical substance or mixture may become present in the environment contributes to an understanding of human and environmental exposures resulting from those activities. As stated in Unit II.B., EPA does not intend to initiate regulatory action under TSCA at this time on the basis of human health.

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IV. Statutory and Executive Order Reviews

Under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this action was submitted to the Office of Management and Budget (OMB) for review. Any changes made to this document in response to OMB comments received by EPA during that review have been documented in the docket as required by the Executive Order.

Since this document does not impose or propose any requirements, and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, the various other review requirements that apply when an agency imposes requirements do not apply to this action. Nevertheless, as part of your comments on this ANPRM, you may include any comments or information that you have regarding this action.

In particular, any comments or information that would help the Agency to assess the potential impact of a rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*); to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note); to consider environmental health or safety effects on children pursuant to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or to consider human health or environmental effects on minority or low-income populations pursuant to Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

The Agency will consider such comments during the development of any subsequent proposed rule as it takes appropriate steps to address any applicable requirements.

List of Subjects in 40 CFR Part 799

Environmental protection, Bisphenol A, BPA, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 20, 2011.

Stephen. A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011–18842 Filed 7–25–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2010–0023; MO 92210–0–008–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Giant Palouse Earthworm (Drilolerius americanus) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the giant Palouse earthworm (*Driloleirus americanus*) as threatened or endangered as petitioned, and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the giant Palouse earthworm is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the giant Palouse earthworm or its habitat at any time.

DATES: The finding announced in this document was made on July 26, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R1–ES–2010–0023. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE., Suite 102, Lacey, WA 98503–1263; telephone 360–753–9440; facsimile 360–753–9008. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, Washington Fish and Wildlife Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), please call the Federal

Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On August 30, 2006, we received a petition dated August 18, 2006, from three private citizens and three other parties (the Palouse Prairie Foundation, the Palouse Audubon Society, and Friends of the Clearwater) requesting that the giant Palouse earthworm (*Driloleirus americanus*) (GPE) be listed as an endangered or threatened species under the Act, and critical habitat be designated. The petition included supporting information regarding the species' taxonomy and ecology, distribution, present status, and causes of decline. On October 9, 2007, we published a 90-day finding stating that the August 30, 2006, petition did not provide substantial scientific or commercial information to indicate that listing the GPE may be warranted (72 FR 57273). On January 24, 2008, the petitioners filed a lawsuit in the U.S. District Court, Eastern District of Washington against the U.S. Department of the Interior and the Service challenging the ''not substantial'' decision (*Palouse Prairie Foundation et al.* v. *Dirk Kempthorne, et al.,* No. 2:08–cv–0032–FVS). On February 12, 2009, the District Court denied the Appellants' motion for summary judgment and granted summary judgment in favor of the Service, upholding the October 9, 2007, determination. The U.S. Court of Appeals for the Ninth Circuit affirmed the District Court ruling on June 14, 2010 (D.C. no. 2:08–cv–00032–FVS).

History of the Current Petition

On July 1, 2009, we received a new petition dated June 30, 2009, from Friends of the Clearwater, Center for Biological Diversity, Palouse Audubon, Palouse Prairie Foundation, and Palouse Group of the Sierra Club (petitioners) requesting that the GPE be listed as an endangered or threatened species either in the entirety of its range, or in the Palouse bioregion as a significant portion of its range, and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). The petition included information on the GPE's taxonomy, species description, distribution, habitat, status, and potential threats. The petition was accompanied by a letter from Samuel W. James, who stated that he is ''the only earthworm taxonomist operating in the U.S.A.'' and has ''extensive experience in biodiversity of earthworms'' (2009 *in litt.*), and included additional information about the GPE and potential threats to the species. In an August 5, 2009, letter to the petitioners, we acknowledged receipt of the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that, due to funding constraints in fiscal year 2009, we would not be able to further address the petition at that time but that we would further evaluate the petition when funding became available in fiscal year 2010.

On July 20, 2010, the Service announced a 90-day finding on the 2009 petition to list the GPE as endangered or threatened under the Act, and to designate critical habitat (75 FR 42059). Based on our review, we found the petition presented substantial scientific or commercial information indicating that listing the GPE as endangered or threatened may be warranted. We initiated a review of the status of the species to determine whether listing the GPE was warranted, and requested scientific and commercial data, and other information, regarding the species. This notice constitutes the 12-month finding on the July 1, 2009, petition to list the GPE as endangered or threatened, as petitioned.

Species Information

The GPE is one of about 100 native and at least 45 nonnative earthworms described in the United States (Hendrix and Bohlen 2002, p. 802). However, very little is known about the species. The GPE was first described by Smith in 1897, based on a collection near Pullman, Washington. At the time of this collection, Smith stated: ''This species is very abundant in that region of the country and their burrows are sometimes seen extending to a depth of over 15 feet'' (Smith 1897, pp. 202–203). His writing is based on second-hand information provided by R.W. Doane of Washington State Agricultural School (now Washington State University) in Pullman, Washington, which does not offer numerical or geographical context for his use of the terms ''very abundant'' or ''that region of the country.'' This burrow depth characterization has not been confirmed or contradicted by any subsequent field work.

Early descriptions indicate the GPE can be as long as 3 feet (ft) (0.9 meters (m); Smith 1897, p. 203). Reports in the popular literature of GPEs up to 3.3 ft (1 m) in length (Science Daily 2006, p. 1; Science Daily 2008, p. 1) have not been confirmed, and collections suggest that specimens are more moderate in size (approximately 6 to 8 inches (in) (15.2 to 20.3 centimeters (cm)) in length) (Smith 1937, p. 161; Science Daily 2006, p. 1; Science Daily 2008, p. 1).

Taxonomy and Species Description

The Service accepts the current taxonomic classification of the GPE (Subclass—Lumbricina; Superfamily—Megascolecoidea; Family—Megascolecidae; Genus—*Driloleirus;* Species—*americanus*) (Smith 1897, p. 203; Fender and McKey-Fender 1990, p. 372; Fender 1995, pp. 53–54). While the naming conventions of the GPE have changed over time (*Megascolides americanus* in 1897 (Smith 1897, p. 203) changed to *Driloleirus americanus* by 1990 (Fender and McKey-Fender 1990, p. 372), there is no information provided in the petition or in our files that would indicate scientific disagreement about its taxonomic classification as a species. Adult specimens in the *Driloleirus* genus are generally distinctive, but identifying to the species level requires expert morphological analysis, including dissection or DNA evidence. Both methods take time, and there are few species experts. It is difficult to identify juvenile earthworm species, because they have no clitellum (a glandular section in the body wall, similar in shape to a saddle). The clitellum is a

key morphological difference for determining many species, and juvenile earthworm coloration can also vary, depending on soil type. Newly hatched earthworms are even more difficult to identify, and until DNA analysis becomes a more available tool, earthworm identification requires the examination of sexually mature individuals. Depending on site conditions and growth, an earthworm would need to be 3 to 6 months of age before being recognizable as being in the genus *Driloleirus* (Johnson-Maynard 2011, pers. com.).

Distribution

Distribution of native earthworm species in the Pacific Northwest is limited by several factors. Pleistocene glaciation covered nearly the whole of Canada and the northern edge of the United States, eliminating earthworms from the area covered with ice (Fender 1995, p. 54). Since the retreat of the glaciers, earthworms in the Lumbricidae family have been able to colonize the ice-free areas in a few centuries, although earthworm distribution in the Megascolecidae family (to which the GPE belongs) stops near the terminal moraines (ridges of rock, gravel and soil across valleys at the end glaciers or ice fields) of the ice sheet. This may be because the megascolecids prefer fine-textured soils, which are largely absent at the edge of Pleistocene glaciation (Fender 1995, p. 55). Other barriers, including mountain ranges and arid areas (Bailey *et al.* 2002, p. 26), have slowed recolonization of the Columbia Basin.

At the time of the original description, in 1897, this taxon was known only from the area around Pullman, Washington (Smith 1937, p. 157). The GPE was originally considered to be an endemic species (a species native to a particular region), that uses grassland sites with deep soil and native vegetation of the Palouse bioregion (Wells 1983, p. 213; James 1995, p. 1; Niwa *et al.* 2001, p. 34). The Palouse bioregion is an area of rolling hills and deep soil in southeastern Washington and adjacent northwestern Idaho. More recently, this species has also been found in Douglas-fir forests in the Palouse region (Johnson-Maynard, September 21, 2010, *in litt.* p. 1; November 30, 2010, *in litt.* p. 1), and on the eastern slope of the North Cascades Mountains (Cascades) west of Ellensburg, Washington (Fender and McKey-Fender 1990, p. 358). In 2010, the GPE was also documented in dry pine forest habitat near Leavenworth, Washington (Johnson-Maynard 2010, p. 3, *in litt.*). This broader distribution, which is now known to include Latah County (Idaho), Whitman County (Washington), Kittitas County (Washington), and Chelan County (Washington), provides evidence that the species may not be endemic to Palouse grasslands.

Confirmed GPE locations, and other potential GPE locations (DNA is currently being analyzed for these specimens), are identified in Table 1. Two of the potential GPE collections are of particular interest: one in shrub/grassland habitat near Chelan, Washington, and one in second-growth forest habitat east of Moscow, Idaho (Johnson-Maynard 2010, pp. 1–2; November 30, 2010, *in litt.* p. 2). The DNA or morphology results for these specimens are not yet available to enable identification to the species level, but if these specimens are confirmed to be GPE, the currently known distribution and habitat types documented for the species will be expanded. One commenter provided a list of possible GPE locations in the Palouse region (Hall 2010, *in litt.* pp. 2–3), but acknowledged that the sites were not confirmed. Although these anecdotal locality reports may be helpful in identifying areas for future GPE surveys, they are not relevant to this finding.

TABLE 1—LOCATIONS AND CHARACTERISTICS OF COLLECTIONS OF THE GPE OR *Driloleirus* GENUS

Site name/ year	County/State	Positive ID as GPE	Vegetation and other site characteristics, if known	Collector (sources) comments	Survey methods, if known
Pullman, 1897?	Latah, ID	Yes		Collected by Doane. (Smith 1897, Gates 1967).	
Pullman, 1931	Whitman, WA	Yes		Collected by Svilha. (Smith 1937).	
Pullman, 1978	Whitman WA?	Yes	Beneath hawthorn thicket	Collected by Fender. (Wells *et al.* 1983, p. 213, credited to Fender). One mile east of Pullman.	
Hwy 95/195, 1978.	Whitman, WA	Yes		Collected by Fender. (Wells *et al.* 1983, p. 213; credited to Fender). Follow-up visit by Johnson-Maynard and Fender in 2006 showed habitat significantly degraded (Johnson-Maynard November 20, 2010, *in litt,* p. 1).	
Moscow Mountain, 1988.	Latah, ID	Yes	Douglas fir forest; Under the moss and litter layer of a forested site.	Collected by Johnson and Johnson. (Palouse Prairie Foundation 2006; Johnson-Maynard, September 21, 2010, *in litt.* p. 1).	

TABLE 1—LOCATIONS AND CHARACTERISTICS OF COLLECTIONS OF THE GPE OR *Driloleirus* GENUS—Continued

Site name/ year	County/State	Positive ID as GPE	Vegetation and other site characteristics, if known	Collector (sources) comments	Survey methods, if known
Ellensburg, pre-1990.	Kittitas, WA	Yes **	.....	Collected by Fender. (Fender 1995; James 2000). ** Specimen in poor shape, but reflects properties of GPE (Fender Sept. 14, 2010, *in litt.* p. 1; Fender, Sept. 30, 2010, *in litt.* p. 10; Johnson-Maynard 2011, Pers. Comm.).	
Smoot Hill, 2005.	Whitman, WA	Yes	Native Palouse prairie remnant, some shrubs; 25% slope, Northwest aspect, 2,723 feet elevation; Soil: silt loam, gravelly sandy.	Collected by Sánchez-de León. (Sánchez-de León and Johnson-Maynard 2009, p.1398; Johnson-Maynard November 30, 2010 *in litt.* p. 2–3). Found during 2-year survey that included remnant prairie and Conservation Reserve Program (CRP) grasslands in Palouse.	Characterized earthworm populations in two grassland types (native prairie and CRP) in Latah County, ID, and Whitman County, WA. Conducted surveys in May and June of 2003 through 2005. Methods: 5 measured pits randomly located and excavated at each site and earthworms were sampled by hand sorting, then classified to species.
Paradise Ridge, 2008.	Latah, ID	Yes	Palouse prairie, some shrubs; 30% slope; Southwest aspect; 3,527 feet elevation; blue bunch wheatgrass, Idaho fescue, snowberry, non-native grasses; Soil: Loam, high content of gravel.	Collected by Umiker and Robertson. (Science Daily 2008, Johnson-Maynard November 30, 2010, *in litt.* p. 2–3; Hill, 2010 *in litt.* pp. 2–3; Johnson-Maynard, September 21, 2010, *in litt.* p. 1; Johnson-Maynard 2010 p. 2–3). Determined to be GPE based on location and partial specimen.	
Paradise Ridge, 2010.	Latah, ID	Yes. Identified by James.	Palouse prairie, same as above.	Collected by Xu and Umiker. (Johnson-Maynard, November 30, 2010, *in litt.* p. 2). Adult GPE found at a privately owned prairie remnant near Moscow, Idaho, 2008 and 2010 Paradise Ridge sites less than 50 feet from each other. Nearby location surveyed in 2005 with no GPE found.	2010 GPE specimens were collected with electroshocker.* Handsorting conducted at the same time did not result in the collection of GPE (Johnson-Maynard December 21, 2010 *in litt.* p. 2). *Use of electrodes and a generator to direct electric current into the soil.
East of Moscow, ID, 2010.	Latah, ID	Pending	Secondary growth forest (Douglas fir).	Collected by: ? (Johnson-Maynard, November 30, 2010, *in litt.* p. 2). Sample too degraded for morphological description; currently analyzing DNA.	
Leavenworth, 2007.	Chelan, WA ...	Pending	Open forest, savanna; Relatively open Ponderosa pine forest. Compacted area covered with gravel soil.	Collected by resident, initially. (Science Daily 2008, Johnson-Maynard 2010, pp. 3–4 Johnson-Maynard November 30, 2010, *in litt.* p. 2.) *Driloleirus* genus; Currently analyzing DNA.	

TABLE 1—LOCATIONS AND CHARACTERISTICS OF COLLECTIONS OF THE GPE OR *Driloleirus* GENUS—Continued

Site name/ year	County/State	Positive ID as GPE	Vegetation and other site characteristics, if known	Collector (sources) comments	Survey methods, if known
Leavenworth, 2010.	Chelan, WA ...	Yes. Adult examined by Fender.	Ponderosa pine, Arrowleaf baslamroot/mule's ear, annual grasses; South aspect, 27% slope; 1,846 feet elevation; Soil: sandy loam.	Collected by Xu and Umiker. (Johnson-Maynard 2010 p. 2–4). Multiple hatchling specimens—will analyze one injured hatchling for DNA.	Follow-up surveys specific to determining *Driloleirus* species and soil and site characteristics. Survey conducted in November, 2010. Soil was excavated from one large pit (approximately 60 cm by 60 cm) at each site. Soil was hand-sorted and all earthworms removed and counted. One sample was collected from each site for DNA analysis.
Near Camas Meadows (near Leavenworth), 2010.	Chelan, WA ...	Pending	Arrowleaf balsamroot, scattered ponderosa pine.	Collected by: Fleckenstein (Johnson-Maynard December 22, 2010 *in litt.* p. 2) Smaller adult, will analyze DNA.	
Chelan, 2010	Chelan, WA ...	Pending	Grasses, Arrowleaf balsamroot, sagebrush, sparse ponderosa pine nearby; ~38% slope, South aspect; 2,057 feet elevation; Soil: gravelly sandy loam.	Juvenile found—will analyze for DNA (Johnson-Maynard 2010, p. 2–4).	Follow-up surveys specific to determining *Driloleirus* species and soil and site characteristics. Survey conducted in November, 2010. Soil was excavated from one large pit (approximately 60 cm by 60 cm) at each site. Soil was hand-sorted and all earthworms removed and counted. One sample was collected from each site for DNA analysis.

Table 1 identifies confirmed GPE and potential GPE locations (at this time just identified to *Driloleirus* genus; DNA analysis is pending), and information on survey methods for each collection where available. While negative survey data are important to understand the distribution of any species, the Service found little information on surveys with negative results in the Palouse, and no information on negative surveys outside of the Palouse. The available information on negative survey results is presented in Table 1.

Earthworms are not randomly distributed in the soil (Guild 1952, as referenced in Edwards and Lofty 1977, p. 127), and some are difficult to detect. Factors that influence this non-random distribution could include: (1) Physical and chemical characteristics of the soil; (2) food availability; (3) the reproductive potential and dispersal capabilities of the species; or (4) interactions between these factors (Murchie 1958, as referenced in Edwards and Lofty 1977, p. 127). Earthworms also occur in patchy distributions, which make it difficult to determine population demographics (Whalen 2004, pp. 143, 148, Umicker 2009, p. 187). Edwards and Bohlen (1996, p. 90) stated that assessments of size, distribution, and structure of earthworm populations are difficult because numbers change with season, demography, and vertical distribution in the substrate.

In his letter submitted with the petition, James (2009 *in litt.* p. 2) states that a reasonable and sufficient effort has been made to find the GPE in a variety of habitats within its presumed range, and that these efforts have failed except in very rare instances in natural or little-disturbed vegetation. James also stated that the Washington State University team surveyed many locations (most importantly in agricultural lands), looking for large burrows that may indicate the presence of large earthworms, but only found *Lumbricus terrestris* (the common night crawler), an invasive species (James 2009, *in litt.* pp. 2–3). However, recently collected and confirmed specimens that have been documented in forested habitats and on the eastern slope of the Cascade Mountains in Washington (Table 1) indicate that survey efforts for the GPE to date have not been adequate to establish its distribution or the diversity of habitat types in which it occurs. Therefore, we believe the petitioners' assumptions regarding the presumed distribution of the GPE are likely erroneous.

Fauci and Bezdicek's study (2002, pp. 258–259) compared nonnative lumbricid earthworm distribution in the Palouse region of eastern Washington and northern Idaho. In the spring of 1999, they surveyed 46 sites in the Palouse, including sites in agricultural fields with a history of conservation tillage, areas next to waterways, and perennial vegetation areas along road rights-of-way or on old homesteads. Survey methods included digging six spades of soil in a 10-square-meter area, then hand-sorting and examining the soil. Additional samples were taken if immature worms were found to ensure adults for identification. Although the results for the GPE were negative, the Fauci and Bezdicek survey was not designed to specifically find this species. In addition, survey protocols have not yet been developed for the GPE; therefore, it is uncertain the protocol used in this study would have found GPE, if present. If reports that the GPE lives in burrows more than 15 feet deep are correct, the spade sampling method used by Fauci and Bezdicek would appear to be inadequate to confirm the species' absence.

Other negative earthworm surveys in the Palouse area were also not specifically designed to find the GPE. Umiker *et al.* (2009, pp. 184–185, 187) compared soil characteristics, cropping practices, and earthworm densities in 24 agricultural fields in the Palouse, but did not identify the earthworms to species level in that study (p. 187). However, adult *Driloleirus* earthworms are distinctive enough that they likely would have been documented, had they been collected. Juvenile *Driloleirus* earthworms, on the other hand, are not distinctive (Johnson-Maynard 2011, pers. com.), and hence could have been missed in this survey. Johnson-Maynard *et al.* (2007, p. 338) compared earthworm dynamics and soil properties in conventionally tilled and no-till agricultural fields on one research farm in the Palouse, and found only the nonnative southern worm (*Aporrectodea trapezoids*) (p. 340). Smetak *et al.* (2007, p. 161) investigated earthworm population density in urban settings in Moscow, Idaho; no native earthworm species were collected (p. 166). Nevertheless, while the negative survey data are interesting, in that the GPE has not been detected in agricultural fields or urban areas to date, coupled with information in Table 1, these data demonstrate how geographically limited the known survey efforts have been.

It is apparent that additional GPE surveys are needed to determine the range, habitat preference, and life history of this species, particularly in light of the recent confirmation of the species near Leavenworth, Washington, in forested habitat. James (2000, p. 5) acknowledges there have been a limited number of earthworms collected in the Columbia basin, which includes the eastern slope of the Cascade Mountains and the Palouse area, and only a small portion of potential habitat has been surveyed. In addition to limited survey efforts, this species is difficult to detect. Fender (September 14, 2010, *in litt.* p. 1) noted that *Driloleirus* species can at times be found near the surface during suitable survey conditions, but if conditions are dry they may be undetectable. Johnson-Maynard (September 21, 2010, *in litt.* p. 2) noted that one Palouse site had negative survey results for native earthworms in 2005, but later sampling in 2010 detected one adult GPE at the same site. The Xerces Society stated that due to the difficulty in detecting the Oregon giant earthworm (*Driloleirus macelfreshi*) (a similar species in the same genus), abundance estimates have not been made, and the species' status and threats cannot be determined until an effective survey protocol is developed and tested (Xerces Society 2009, p. 3).

Due to the difficulty in surveying for the GPE, the Idaho Department of Fish and Game, the Service, and others have contributed resources to the University of Idaho to develop appropriate survey protocols to address the scientific challenges associated with GPE surveys (Groen 2010, *in litt.* p. 2; Johnson-Maynard 2010, *in litt.* p. 2; Science Daily 2008, p. 2). Staff at the University of Idaho, including Johnson-Maynard and others, are currently working to develop and refine sampling methods and strategies, including a soil electroshocking technique that appears to be promising.

In summary, the level of survey effort for the GPE has been low, the species is difficult to detect, and effective survey methods are still being developed. There is a lack of survey data, and large geographic and taxonomic gaps in our knowledge (Fleckenstein 2011, *in litt.* p. 1). Researchers have only recently begun to look more broadly for the species including localities along the eastern slope of the Cascades. However, the GPE has now been documented in dry forest habitats, which provides further evidence that the complete range and distribution of the species is presently unknown, but are likely broader than the area identified by the petitioners.

Habitat

Habitat requirements for the GPE are not well understood. The original descriptions by Smith (1897, 1937) do not present any descriptive information about the habitat where the specimens were initially collected. The GPE was originally thought to be a Palouse-region grassland species, and several specimens have been found in Palouse grassland remnants (Table 1; Sánchez-de León and Johnson-Maynard 2009, p. 1393; Science Daily 2008, p. 1; Johnson-Maynard September 21, 2010, *in litt.* pp. 1–2; Johnson-Maynard, November 30, 2010, *in litt.* p. 2–3; Jensen 2010, *in litt.* p. 6). Wells *et al.* (1983, p. 213) stated that Fender collected specimens under hawthorn thickets; Johnson-Maynard (September 21, 2010, *in litt.* p. 1) described the vegetation type at Johnson and Johnson's Moscow Mountain site as Douglas-fir forest.

There is limited specific information on the habitat type associated with the GPE collected near Ellensburg, Washington. Fender and McKey-Fender (1990) described the location as ''in the hills west of Ellensburg,'' and they described the GPE range at this locality as extending into ''treeless areas'' (pp. 358, 366). The GPE was not collected in recent surveys conducted in agricultural and urban locations in Latah County, Idaho (Johnson-Maynard *et al.* 2007, p. 340, Smetak *et al.* 2007, p. 166; Umiker *et al.* 2009, p. 187), and Whitman County, Washington (Fauci and Bezdicek, 2002 p. 257). Vegetation and soil characteristics of confirmed and potential GPE sites are described above in Table 1, where that information was available. Sánchez-de León and Johnson-Maynard (2009, p. 1394; Petition, p. 5) observed that remaining prairie remnants in the Palouse are often steep or rocky, or contain shallow soil, and, therefore, may be less suitable for earthworms (Sánchez-de León and Johnson-Maynard 2009, pp. 1394, 1398; Petition, p. 5). However, Johnson-Maynard (2010, pp. 2–3) noted that soils at the Paradise Ridge site near Latah, Idaho, had a high gravel content, suggesting that the GPE may be able to exist in soil types that would not be expected to be preferred habitat for most earthworms. She further noted that past *Driloleirus* samples provided by a landowner near Leavenworth, Washington, were obtained from a compacted area covered with gravel. Johnson-Maynard (2010, pp. 3–4) described the confirmed GPE collection site near Leavenworth, Washington, as Ponderosa pine forest with an understory of *Balsamorhiza sagittata* (arrowleaf balsamroot) and annual grasses. Although the GPE has also been documented in forests on the eastern slope of the Cascades and in Douglas-fir forests in the Palouse, significant uncertainties exist as to whether the species occurs in specific types or ages of forests, occurs in previously logged forests, or may be habitat-limited because of elevation or other site characteristics.

Biology

Earthworms are generally divided into three life-history strategies based on their habitat use: epigeic, endogeic, or anecic (Bouche 1977, as referenced in James 2000, p. 2; Edwards and Bohlen 1996, pp. 113–115). Epigeic worms live near the ground's surface and consume organic litter on and near the surface. Endogeic worms (which the petitioners currently believe the GPE to be (James 2009, *in litt.* p. 3)): (1) Live in the upper layers of mineral soil, (2) consume organic material in the mineral soil or at the soil-litter interface, and (3) are often pale in appearance (Edwards and Bohlen 1996, p. 114). Anecic worms, which the petitioners initially believed the GPE to be (James 2009, *in litt.* p. 3), and we believe the GPE to be based on

the prevailing evidence, live in deep, semi-permanent burrows and move to the surface to feed on fresh plant litter. Anecic earthworms are the largest and longest lived of the three earthworm types (James 2000, p. 2; 1995, p. 6), and transport fresh plant material from the soil surface to subterranean levels. Deep-burrowing anecic earthworms usually produce castings on the surface near exits to their burrows (Edwards and Bohlen 1996, p. 198). GPE castings were observed at the Leavenworth, Washington, study area (Johnson-Maynard 2010, p. 2).

James (2009, *in litt.* p. 3) concluded that, based on the lack of pigmentation and information indicating that the species is not associated with surface castings, the GPE ''is probably an endogeic, meaning living entirely in the soil, on soil resources consisting of organic matter in varying stages of decomposition.'' He also states that deep burrow depths would be useful in avoiding dry soil conditions common in late summer within the range of the species (September 3, 2010, in litt. p. 1). Fender (September 14, 2010, *in litt.* p. 1) thinks deep soils would be helpful to survival and sees no reason to doubt the earlier descriptions of burrowing depths.

Characterizing earthworm life histories within one of three life-history strategies may not be entirely instructive, because some species may exhibit a combination of characteristics (Bouche 1977, as referenced in Edwards and Bohlen 1996, p. 113). However, understanding an earthworm species' life history is important for evaluating potential threats, the pathways that expose them to threats, and how they might respond.

As stated earlier, James (2009, *in litt.,* p. 3) initially speculated that the GPE was an anecic species, but now believes the species is probably an endogeic earthworm. He indicated that this conclusion is based on seeing a GPE specimen and learning more about the genus; if the GPE lacks pigmentation in the head and does not defecate at the surface (*i.e.,* leave castings), it is highly unlikely to have an anecic life-history strategy. We have no information indicating whether James has conducted field surveys for this particular earthworm species; however, his current opinion appears to be inconsistent with the existing literature, descriptions of GPE burrowing depths described in the literature, and field observations of castings by researchers at the Leavenworth, Washington, GPE location (Smith 1897, pp. 202–203; Fender and McKey-Fender 1990, p. 364; James 2000, p. 5; Johnson-Maynard 2010, p. 2).

In our 2010 90-day finding (75 FR 42059), we solicited scientific information on the GPE's endogeic or anecic life-history strategy to inform our status review. Johnson-Maynard (*in litt.* 2010, p. 2) stated that the GPE is likely anecic, based on her surveys at locations near Leavenworth, WA. In those studies, the GPE was associated with pores leading down into unconsolidated parent material, and surface castings were observed, which are indicative of a deep-burrowing species. Johnson-Maynard has conducted or been involved with a number of field surveys where GPE specimens were collected (see Table 1 above). Therefore, based on the best available scientific information, field observations, and the existing literature, we believe the prevailing evidence indicates the GPE is an anecic earthworm species, although we acknowledge that there are still significant uncertainties regarding its biological requirements.

In summary, the current understanding regarding the life cycles of even quite common earthworms is inadequate and requires more study (Edwards and Lofty 1977, p. 68), and there are many species about which little is known (Edwards and Bohlen 1996, p. 46). Accordingly, there are significant scientific uncertainties regarding the biology, distribution, habitat, and population trends of the GPE. The GPE's distribution has been documented to include areas within the Palouse bioregion, and areas within the eastern slope of the Cascade Mountains in Washington. We do not know whether there are other occupied sites between or outside of these locations, as few surveys have been conducted, the species is difficult to survey for, and survey methods are still being developed.

Documented habitat types used by the GPE in the Palouse bioregion include native grasslands and Douglas-fir forest. In addition, the GPE location near Leavenworth, Washington, is described as dry Ponderosa pine forest. There is very little specific information on habitat type at the GPE location west of Ellensburg, Washington. The *Driloleirus* earthworm species recently collected near Chelan, Washington, and east of Moscow, Idaho, are being identified (see Table 1 above). If these specimens are confirmed to be the GPE through DNA or other analysis, the species' range and diversity of habitat types used would be expanded.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the GPE in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In addition, in making this 12-month finding on the petition we considered and evaluated the best available scientific and commercial information.

Given the paucity of information on GPE, surrogates may be useful. The petitioners claim that it is appropriate to use other earthworms as surrogates to determine effects to the GPE, provided they are biologically and ecologically similar (Sappington *et al.* 2001, p. 2869; Caro *et al.* 2005, p. 1821; Petition, p. 10). In some instances, the use of surrogate species (such as other earthworms) may be helpful in evaluating potential effects to the GPE, provided the appropriate scientific controls and precautions are taken. Caro *et al.* (2005, p. 1821) states ''for substitute species to be appropriate, they should share the same key ecological or behavioral traits that make the target species sensitive to environmental disturbance and the relationship between populations' vital rates and disturbance levels should match that of the target; these conditions are unlikely to pertain in most circumstances and the use of substitute species to predict endangered populations' responses to disturbance is questionable.'' The Oregon giant earthworm (*Driloleirus macelfreshi*) is in the same genus, and is believed to construct permanent, deep, subsurface burrows (a characteristic that indicates an anecic life-history strategy), and could potentially be an appropriate surrogate. However, the status and threats of this species cannot be determined until an effective survey protocol is developed and tested (Foltz 2009, pp. 2–3). Therefore, using it as a surrogate would provide little to no additional insight into potential threats to GPE. No other relevant surrogate

species have been suggested or investigated.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat Loss and Fragmentation

Historical information regarding potential habitat loss is presented in the following discussion, for context. However, the focus for purposes of our analysis and response to the petition is on current and future habitat conditions, and whether the activities responsible for those conditions present a threat to the GPE such that listing under the Act is warranted.

As described in the 2010 90-day finding (75 FR 42061), the petitioners claim that the GPE is threatened by habitat conversion, loss, and fragmentation from agriculture and urban sprawl in the Palouse region (Petition, pp. 1, 7). The petitioners cite Sánchez-de León and Johnson-Maynard (2009, pp. 1393–1394, 1398), who state that combined effects of land-use change, habitat fragmentation, and competitive interactions have caused native earthworm declines. James (2009, p. 1) stated that indigenous earthworms are sensitive to habitat disturbance, and that to find indigenous earthworms one must work in undisturbed or mildly disturbed vegetation. Undisturbed vegetation is rare in the Palouse bioregion, as the native grassland habitat has been reduced to less than 1 percent of its pre-agricultural extent (Petition, p. 8; James 2009, p. 1; Noss *et al.* 1995, p. 74).

Estimates of native habitat conversion in the Palouse bioregion vary, but several studies indicate the conversion has been high: 99.9 percent of Palouse prairie habitats have been converted to agriculture (Noss 1995, p. 74); 94 percent of the grasslands and 97 percent of the wetlands in the Palouse bioregion have been converted to crop, hay, or pasture (Black *et al.* 1998, pp. 9–10); 21 percent of previously forested lands have been converted to agriculture or urban uses (Gilmore 2004, p. 3); and less than 1 percent of the original bunchgrass prairie habitat remains (Donovan *et al.* 2009, p. 1). However, comments on the 90-day finding noted that habitat loss in the Palouse due to agriculture happened historically and is not currently occurring. Much of the prairie was converted to farms by 1910, and much of the urban growth around the Pullman area occurred on farmland, not remaining prairie fragments (McGregor 2010, *in litt.,* p. 2; McGregor 1982, p. 109). However, habitat conversion in the Palouse may still occur, as neither Latah County, Idaho, nor Whitman County, Washington, have ordinances to prevent native habitat conversion (Latah County Board of Commissioners 2010, pp. 1–27; Whitman County 2010, pp. 1–76).

The petition identified several locations in the Palouse area that contain prairie remnants (Petition, p. 5). A study of four prairie remnants and adjacent Conservation Reserve Program (CRP) fields was carried out by Sánchez-de León and Johnson-Maynard (2009, pp. 1393, 1395; Petition, p. 4). In that study, the researchers collected one GPE, and commented that many remaining prairie remnants are not suitable for tillage because they are often steep or rocky, or contain shallow soil (2009, p. 6; Petition, p. 5). They also hypothesized that prairie remnants may not be the preferred habitat for the GPE due to shallow rocky soil. They described the GPE collection site at Paradise Ridge near Latah, Idaho, as having a high gravel content (Johnson-Maynard 2010, pp. 2–3). They acknowledged that sampling challenges could bias survey information on the GPE, and cautioned that hand-sampling methods may underestimate abundance of anecic species (Sánchez-de León and Johnson-Maynard 2009, p. 1399).

There is no baseline (*i.e.,* pre-agriculture) density and distribution information on the GPE, and there are significant challenges associated with surveying for this species. These challenges, coupled with the fact that earthworms have patchy distributions (Guild 1952, as referenced in Edwards and Lofty 1977, p. 127; Murchie 1958, as referenced in Edwards and Lofty 1977, p. 127; Whalen 2004, pp. 143, 148; Umicker 2009, p. 187), preclude our ability to correlate land use impacts with GPE abundance, based on the best available information. The GPE has been documented in both the Palouse bioregion and on the eastern slope of the Cascade Mountains, near Ellensburg and Leavenworth, in central Washington (see Table 1 above). There is little descriptive information about the habitat associated with the GPE that was collected near Ellensburg; it isn't clear whether the location is grassland or a different habitat type, and the specific location is uncertain. James (2009 *in litt.,* p. 2) speculated the Ellensburg site collection is a relict of a distribution that must have been more or less continuous at one time, but due to climate change and increased aridity has now become fragmented. Fender and McKey-Fender (1990) described the locality as being ''in the hills west of Ellensburg,'' and noted that the range of the GPE extends into ''treeless areas'' (pp. 358, 366). A report by Adolfson Associates (2005, p. 1) was presented as evidence of urban sprawl being a threat to GPE habitat. However, this report was limited to areas within the City of Ellensburg, Washington boundary, and is not particularly instructive in terms of correlating future urban development with loss of GPE habitat because pre-development density or distribution or both in that area are unknown. The petitioners also claim the grasslands around Ellensburg have been extensively modified by agriculture, similar to the Palouse bioregion (Adolfson Associates 2005, p. 2; Petition, p. 8; James 2009, *in litt.,* p. 2). However, the best available information is insufficient to determine or infer how or whether the GPE has been impacted by habitat loss and fragmentation in this area, because we have no baseline information with which to correlate land use modification with GPE abundance.

The best available scientific information is also inconclusive as to whether the GPE occurs in a certain forest type or age, or whether the species occurs in a broad variety of habitats. The GPE site near Moscow, Idaho, is in Douglas-fir forest habitat, and the Leavenworth, Washington, site is in dry ponderosa pine forest. Quigley *et al.* (1996, p. 54) stated that in the Columbia Basin, the total area in forest has remained relatively constant during the last two centuries, and broad indicators of sustainability indicate that Basin forest acreage and inventory volumes are relatively constant. If the GPE is a forested habitat generalist, it could be stable in forested locations; however, if it requires a forest of a specific type or age it may or may not be impacted by habitat loss, depending on the type of development activity involved. In either case, the available scientific evidence does not address that uncertainty.

In summary, the GPE's current and historical population size, distribution, and range of habitat types used are unknown. Based on recent collections, the GPE's range outside of the Palouse region has been expanded and now includes portions of the eastern slope of the Cascade Mountains. The GPE has also been documented in both grassland and forested habitats in the Palouse. However, survey efforts have been limited, and sampling protocols are still being developed to improve researchers' ability to detect the species during field investigations. While habitat conversion may occur and there may be local impacts, the GPE range is much wider than previously known and includes more diverse habitats than previously

known. Because we cannot identify the full extent of the GPE's range or the varieties of habitat types it may use, we are unable to correlate habitat conversion with GPE abundance. Therefore, for the reasons stated above, the best available scientific information does not indicate current or future habitat loss or fragmentation represents a threat to the species.

General Impacts to Soil Characteristics

The petitioners present several claims in their petition, each of which has been evaluated and addressed below. They claim that earthworms or their grassland habitats are influenced by soil disturbance, tillage, traffic, food sources, chemical and pesticide residues, and soil microclimate (Jennings *et al.* 1990, p. 75; Edwards and Bohlen 1996, pp. 283–289; Edwards *et al.* 1995, pp. 200–201; USDA–NRCS 2001, p. 2; Petition, p. 10). Moisture, temperature, and food availability influence earthworm populations in general, and earthworms need the organic matter found in the topsoil that agriculture removes (James 2000, pp. 1–2; Petition, p. 11). Bare soil can increase the effects of flooding, drought, or other weather conditions due to the lack of vegetation that buffers soil from extreme moisture, dryness, and temperature fluctuations. These conditions can temporarily or permanently make soils unusable by earthworms (James 2000, pp. 1–2; Petition, p. 11). James (2009, *in litt.,* p. 1) stated that earthworms are highly sensitive to habitat disturbance, such as forest clear cutting or conversion of any habitat to agriculture, and the native earthworms are generally destroyed by any type of drastic and sudden habitat modification. One commenter stated there may have been long periods of bare soil historically in the Palouse region, but seeding and fertilizing technology improvements now enable farmers to prepare seedbeds with minimal disturbance (McGregor 2010, *in litt.,* p. 2). James also stated, ''when seeking the indigenous earthworms, it is almost always a complete waste of time to work in anything but undisturbed or mildly disturbed stands of vegetation'' (James 2009, *in litt.,* p. 1). GPE have been found in forested locations, but it is unknown whether these are previously disturbed habitats.

We acknowledge that soil disturbance has occurred and may still be occurring in GPE habitat. However, we currently have no information linking soil disturbance with GPE presence or absence. Survey efforts for GPE have been limited, and sampling protocols remain to be developed. Until we have a better understanding of the species' distribution and habitat information, we are unable to determine with reasonable confidence whether the GPE uses disturbed or undisturbed habitats, or both. Therefore, the best available scientific information does not indicate soil disturbance is a threat to the GPE.

Soil Compaction

The petitioners claim that soil compaction from farm machinery or other activities can affect earthworms by making burrowing and feeding more difficult (James 2000, p. 9), by decreasing soil pore size and thereby decreasing nutrient retention and changing the soil food web (Niwa *et al.* 2001, pp. 7, 13), or by favoring nonnative earthworms that prefer course soils rather than the fine soils apparently preferred by the GPE (Fender and McKey-Fender 1990, p. 364; Petition, p. 11). Johnson-Maynard (September 21, 2010, *in litt.,* pp. 2–3) noted that the effects of soil compaction on earthworm density can vary based on the species' ecological strategy (*i.e.,* anecic versus endogeic); larger species, such as anecic earthworms, have been found to be less sensitive to soil compaction than smaller species (Cluzeau *et al.* 1992, p. 1661) and may be more abundant in compacted areas compared to non-compacted areas (Cuendet 1992, p. 1467). Fender (1995, p. 57) has often found other Argilophilini worms (a tribe of native Pacific Northwest earthworms that includes the GPE) in compacted trails; Capowiez *et al.* (2009, p. 214) notes that our current knowledge of the sensitivity of earthworms to compaction is limited. In addition, the assumption that compaction would favor exotic species over native species due to their preference for finer-textures soils is invalid; while compaction does impact total porosity and pore size distribution, it does not alter soil texture (Johnson-Maynard, September 21, 2010, *in litt.,* p. 3). Johnson-Maynard states that generalizations such as those presented by the authors of the 2009 petition, suggesting that compaction favors nonnative species, should be interpreted with caution (Johnson-Maynard, September 21, 2010, *in litt.,* p. 3). In addition, survey efforts for the GPE have been limited, and sampling protocols remain to be developed. Until we have a better understanding of the species' distribution and habitat information, we are unable to determine with reasonable confidence whether soil compaction is occurring in GPE habitat, and if it is, whether it is resulting in a negative response in the species. Therefore, the best available scientific information does not indicate soil compaction is a threat to the species.

Soil Chemistry

The pH scale describes how acidic or basic a substance is, and ranges from 0 to 14, with 7 being neutral, below 7 being acidic, and greater than 7 being basic. The petitioners cite soil chemistry effects, notably a reduction in soil pH from nitrogenous fertilizer application, as having deleterious effects on earthworms (Ma *et al.* 1990, p. 76), and state that generally earthworms do not thrive in soils with a pH below 5 (Petition, p. 11; Edwards and Lofty 1977, p. 234). However, the best available scientific information related to the responses of earthworms to pH appears to both support and contradict the petitioners' claim with regard to the GPE. Soil pH is a factor that often greatly affects earthworm populations, both in numbers of individuals and numbers of species. According to the Natural Resources Conservation Service (USDA–NRCS 2001, p. 5), earthworms do not thrive in soils with a pH below 5 (USDA–NRCS 2001, p. 2; Edwards and Lofty 1977, p. 234; Edwards and Bohlen 1996, p. 276). However, one Australian study of tillage effects to one native anecic earthworm species (*Spencefiella hamiltoni*) described the surface soil in the study area as highly acidic (pH = 4.1), with the pH increasing (or acidity decreasing) with depth (pH = 5.0 at 0.8 meters) (Chan 2004, p. 90). Some earthworm species are intolerant of acid soil conditions, some are tolerant, and others can tolerate wide ranges of soil pH (Edwards and Bohlen 1996, p. 142). Because soil pH is related to other soil factors, such as clay content, or cation exchange capacity (the ability to hold plant nutrients), it is often difficult to establish a direct cause-and-effect relationship between soil pH and the size of earthworm populations (Edwards and Bohlen 1996, p. 144).

Fender (1995, p. 56) stated that Argilophilini worms appear to have higher tolerance than lumbricids (nonnative earthworms, such as the night crawler) for low pH (below 5, acidic) soils; high clay; and resinous, low-nitrogen, plant litter. Sánchez-de León and Johnson-Maynard (2009, pp. 1397, 1399) found a significant negative interaction between soil pH and mean earthworm density and mean earthworm fresh weight. The nonnative southern earthworm (*Aporectodea trapezoids*) was more abundant in CRP sites with lower pH values (pH 5.9 to 6.2) than prairie soils (pH 6.3 to 6.6) in a study of four paired CRP and prairie remnant sites. Their data did not support their hypothesis that native

earthworms would be dominant in prairie remnants and exotic earthworms dominant in CRP set-aside lands (Sánchez-de León and Johnson-Maynard 2009, pp. 1398). In that study, one GPE was collected during sampling at the Smoot Hill prairie remnant study site. In the study, the prairie remnants' mean soil pH at depth was pH 6.3 (20–30 cm), pH 6.5 (10–20 cm), and pH 6.6 (0–10 cm), while in the CRP study sites the mean soil pH at depth was pH 6.2 (20–30 cm), pH 6.0 (10–20 cm), and pH 5.9 (0–10 cm) (Sánchez-de León and Johnson-Maynard 2009, p. 1397). The researchers stated they were unsure whether lower pH (more acid) in CRP sites correlated with some other non-measured soil parameter, such as previous fertilizer applications and resultant increased organic matter. They hypothesized the negative relationship between earthworm density and soil pH could be a reflection of a past land use rather than a direct effect of soil pH on earthworms (Sánchez-de León and Johnson-Maynard 2009, p. 1399). Other studies in the Palouse region demonstrated the mean soil pH in direct-seeded agricultural fields was pH 5.35, and in conventional tillage fields pH 5.61 (Umiker *et al.* 2009, p. 184). One commenter (McGregor 2010, *in litt.,* p. 4) stated less than 0.5 to 1 percent of the soils sampled in the Palouse have pH levels below 5.

In summary, studies investigating relationships between earthworms and soil pH indicate that earthworm response can vary with species, location, life-history strategy, or other attributes. The best available scientific information on this relationship for the GPE is limited (*e.g.,* to our knowledge, only the Smoot Hill study has investigated the potential soil pH relationship). There is significant uncertainty regarding the correlation between soil pH and GPE occurrence or persistence, and insufficient data to identify pH cause-and-effect relationships that might be limiting for the persistence of this species. However, in the Palouse region, soil pH levels do not appear to be so acidic (below pH 5) that they negatively affect earthworms generally. Also, the GPE may be more tolerant to acidity than some species of earthworms. In addition, the range of the GPE is wider than previously known, and includes pine forests on the eastern slope of the Cascades, although the full extent and type of forested habitats occupied by the GPE are not yet known. Detailed soil characteristics are not known for the GPE location near Leavenworth, Washington. Accordingly, the best available information does not indicate that changes in soil chemistry represent a threat to the GPE.

Tillage and Agriculture

The petition states that tillage removes the original topsoil, which may reduce earthworm burrow densities, soil aeration, soil infiltration rates, and the amount of organic matter available to the GPE for forage (Petition, pp. 10–11). Literature cited by the petitioners stated the original topsoil has been lost from 10 percent of Palouse cropland, and 60 percent of cropland has lost 25 to 75 percent of its topsoil (Veseth 1986b, p. 2). The petition did not present detailed information on agriculture activities in the Ellensburg area, although the Adolphson Associates report (2005, pp. 14–22) presented with the petition includes maps and photographs depicting areas converted to agriculture within the Ellensburg, Washington, city boundaries.

The potential threats to the GPE from tillage and cultivation are reduced food sources and burrow compaction, but would likely vary depending on its life-history strategy. Annual crops put a small fraction of their production into root mass (James 2009, *in litt.*, pp. 3–4), whereas perennial prairie grasses put approximately 50 percent of their annual production into roots, which provide resources for soil invertebrates (including endogeic earthworms). Endogeic earthworms, which the petitioners assert the GPE to be (James 2009, *in litt.*, pp. 3–4), would probably be more susceptible to agricultural activities that reduce soil organic matter, based on their need for organic matter as a food source. However, anecic earthworms use surface litter as a food source, and the best available scientific information supports the GPE being an anecic earthworm species. In either case, surveys to date in the Palouse have not documented the GPE in either agricultural fields or CRP lands (Fauci and Bezdicek, 2002, p. 254; Sánchez-de León and Johnson-Maynard 2009, p. 1393; Johnson-Maynard *et al.* 2007, p. 340). Therefore, we have no information indicating that the GPE would be exposed to reduced soil organic matter or reduced surface litter caused by ongoing cultivation in the Palouse region.

One Australian study demonstrated that 3 years of tillage reduced earthworm burrow density by nearly 90 percent (Chan 2004, p. 89; Petition, p. 10), which reduced the maximum infiltration rate of the soil and significantly increased the likelihood of runoff and erosion. Chan's study (2004, p. 90) compared tillage effects to soil infiltration by monitoring burrow density for the North Auckland worm (*Spenceriella hamiltoni*), an anecic member of the Megascolecidae (in the same family as the GPE), under three conditions: no-till (crops drilled directly into ground with a special slit drill), conventional one-pass, and conventional two-pass tilled agriculture (Chan 2004, p. 94). The effect of tillage on earthworm abundance is usually negative because tilling causes physical damage and burial of residues, although tillage could also increase the abundance of some earthworm species due to increases in food supply by incorporation of residues into the soil (Chan 2004, p. 90). In this study, tillage was found to decrease burrow density and water infiltration into the soil (Chan 2004, pp. 89, 94). The author concluded that under cropping, preservation of earthworm burrows can be achieved by adopting conservation tillage techniques (Chan 2004, p. 96). Conservation tillage techniques generally involve establishing crops in a previous crop's residues, which conserves water and minimizes soil disturbance and erosion.

Johnson-Maynard (September 21, 2010, *in litt.*, p. 2) discusses studies in which tillage effects on earthworm density were found to be dependent on the ecological grouping of earthworms in an area (*i.e.*, anecic or endogeic). Chan (2001, pp. 179, 185–187) found in a 3-year study that tillage had a strong negative impact on anecic species due to a combination of direct damage, burial of residue (food source), and destruction of earthworm burrows, while endogeic species were positively affected in the short term due to their smaller size (less physical damage) and increased availability of organic matter. In the Palouse bioregion, tillage removes the original topsoil, which may reduce earthworm burrow densities, soil aeration, soil infiltration rates, and the amount of organic matter available to the giant Palouse earthworm for forage (Veseth 1986b, p. 2; Petition, pp. 10–11). Edwards and Bohlen (1996, p. 215) stated that earthworm populations were much larger in soil that was manipulated using no-till methods. No-till agriculture accounted for 14,563 acres (5,893 hectares), or roughly 5 percent of the total surveyed acreage in the Palouse in 1989, up from the previous 5-year average (1984–1988) of 3 percent (Hall 1999, p. 15).

The GPE has been documented in the Palouse in remnant native grassland and in Douglas-fir forests, and in ponderosa pine forest at the Leavenworth site near Chelan, Washington. The GPE distribution is wider than previously known, but its total distribution remains uncertain because the species is very

difficult to detect, survey protocols are still being developed, and the level of survey efforts within and outside of the Palouse area has been very low. While there may have been historical impacts to the GPE from agriculture in the Palouse, the magnitude of threats from those activities is difficult to determine because we have no baseline population or distribution information with which to make a comparison, other than the anecdotal statement in Smith (1897, pp. 202–203). In addition, to date the GPE has not been found in agriculture fields in the Palouse, and we have no information that indicates the GPE is or will be exposed to tillage and agriculture. Accordingly, the best available information does not indicate that tilling and agriculture represent a threat to the GPE.

Grazing

James stated that grazing degrades earthworm habitats, potentially to the point of causing extirpation, and that soil compaction from livestock grazing can affect earthworms by making burrowing and feeding more difficult (James 2000, pp. 9–10). The petition also claims that livestock grazing changes the quality and accessibility of detrital material, decreasing organic matter available to earthworms through conversion of herbage to partly digested clumps of organic matter (James 2000, p. 9; Petition, p. 14).

The petitioners describe livestock grazing as a pervasive land use in the range of the GPE. James (2000, p. 9) stated: (1) Livestock grazing can cause soil compaction, thereby making burrowing and feeding more difficult for earthworms; (2) effects are variable by earthworm species or habitat type (or both); (3) large earthworm species are less heavily impacted by grazing; and (4) ''without further knowledge about native earthworms and the presence or absence of earthworms in lands subject to grazing in the Columbia River basin assessment area, it is of little use to speculate further.'' Cluzeau *et al.* (1992, pp. 1661, 1663) demonstrated intensive trampling by cattle can reduce earthworm densities, particularly for smaller species and those living near the surface. No specific information was provided by the petitioners regarding the extent of livestock grazing impacts in the Palouse or Ellensburg areas. However, several individuals (Field 2010, *in litt.*, p. 2; Jensen 2010, *in litt.*, p. 6) commented that grazing can benefit some earthworms through increasing organic matter and plant species diversity (Dorsey *et al.* 1998, p. 2; Taylor and Neary 2008, p. 2). We cannot assess the distribution of the GPE in relation to grazing activities or grazing intensity because the species' range is unknown, but is wider than previously documented, there have been very few surveys, and the habitats used by the species are more variable than previously known. However, the best available information indicates grazing can sometimes benefit earthworms and larger species like the GPE may be less impacted by grazing than smaller species. Accordingly, based on the best available information, grazing has not been demonstrated to be a threat to the species.

Chemical Applications

Earthworms have been shown to be sensitive to some pesticides (Edwards and Bohlen 1996, pp. 283–285), and the toxicity varies depending on the type of pesticide used. Generally, carbamates (organic compounds derived from carbamic acid and frequently used in insecticides) are the most toxic (Edwards and Bohlen 1996, pp. 283–285). In addition, although chemicals may not result in direct toxicity, they may have indirect effects such as reduction in organic matter, which is a food source for earthworms. Contaminant exposure and toxicity depends on a wide range of chemical, physical, and biological factors, and the rate of application. Specific knowledge of the fate and transport of the chemical within the environment, physicochemical attributes of the exposure media, and biological characteristics of the organism are required to determine if a species may be impacted by environmental contaminants. Although pesticide application is widespread within the Palouse, information on GPE distribution, biology, and life history is limited. There is significant uncertainty with regard to determining the potential impact pesticides might present to this species, and what application rate(s) would be required for those impacts to rise to a level of being a threat to the species. Exposure could also vary, depending on the GPE's life-history strategy. Anecic species (which we believe the GPE to be based on the best available scientific information) may have less exposure than other forms. For example, the black-headed worm (*Aporrectodea longa*), an anecic species, was determined to be less susceptible to pesticides because of its ability to burrow deep into the soil. This species also undergoes an obligatory diapause in the summer months, which may limit pesticide exposure (Wheatley and Hardman 1968, as referenced in Edwards and Bohlen 1996, p. 280; Gerard 1967, as referenced in Edwards and Bohlen 1996, p. 280). It is unknown whether the GPE undergoes a diapause. In addition, in a midwestern United States study on agriculture and earthworms, Simonson *et al.* (2010, p. 147) found the most commonly applied pesticides and increased crop diversity did not have a significant effect on either the endogeic or anecic earthworm groups.

From 1992 through 1995, pesticides were assessed as part of the National Water-Quality Assessment (NAWQA) Program, and at least one pesticide was detected within 97 percent of surface water samples collected within the Palouse bioregion. No pesticides were found in groundwater (the only source of drinking water in the area) at concentrations that exceeded drinking water standards or guidelines (Roberts and Wagner 1996, p. 15). Although some data are available for pesticide presence in surface and groundwater, there is little information on pesticide presence or concentrations in soils within documented GPE habitat. Many currently used pesticides are water soluble and are much less persistent in soils than the organochlorine pesticides used in the past.

Approximately 700,000 pounds of commonly used pesticides are applied in the Palouse bioregion annually (Roberts and Wagner 1996, p. 2), and agricultural interests in the Palouse region apply many herbicides to control invasive and noxious plants (Hall *et al.* 1999, p. 12, Table 3.08; Kellogg *et al.* 2000, p. 2). Wagner *et al.* (1995, pp. 21–22) identified several pesticides used in an area within the Palouse bioregion, several of which were detected in water samples, including Triazine (Atrazine) (pp. 15–16, Table 4), although several comments (*e.g.*, McGregor *in litt.*, p. 4) stated that Triazine family herbicides are not used commercially for agriculture in the Palouse. The petition claims no-till farming uses herbicides rather than tilling for weed control, resulting in higher herbicide use in no-till fields than in tilled fields (Veseth 1986a, p. 1; Petition, p. 12); however, no-till farming was estimated in 1989 to be used on only 5 percent of the fields in the Palouse region (Hall 1999, p. 15). Several individuals from the Palouse bioregion commented that no-till farming uses glyphosate herbicides (Jensen 2010, *in litt.*, p. 5; McGregor 2010, *in litt.*, p. 2; Mick 2010, *in litt.*, p. 2), which studies show have no toxicity for earthworms when properly applied (Edwards and Bohlen 1996, p. 304). Individuals also commented that agricultural users apply fertilizers and pesticides sparingly and with precision because of the costs involved (Barstow

2010 *in litt.,* p. 2; Jensen 2010 *in litt.*, p. 5).

There is limited information available on pesticide use outside of the Palouse bioregion in the vicinity of documented GPE locations. One study detected such chemicals in irrigation canal monitoring sites in the Yakima watershed (Johnson 2007, p. 1). However, the monitoring sites used for the Johnson (2007) study appear to be lower in the watershed than the Ellensburg GPE location (Fender and McKey-Fender 1990, pp. 358, 366). Although groundwater and surface water pesticide monitoring studies provide an indication of pesticide use in the general area, the data are not informative on whether pesticides are present in GPE-documented habitats. We are also unaware of any pesticide monitoring studies in the vicinity of the GPE location near Leavenworth, Washington.

In summary, agricultural lands have been the primary focus areas for pesticide and herbicide monitoring studies; however, the GPE has not been documented to date in these types of areas. Although we have some information on pesticide applications in the Palouse area, and some generalized information regarding pesticide toxicity to earthworms, the available information is inadequate to determine how and whether those pesticides impact soils or habitats occupied by the GPE. We have some limited pesticide application information for the Ellensburg, Washington, vicinity, although the data are not particularly enlightening with regard to proximity to the GPE location, and we have no pesticide information related to the GPE location documented near Leavenworth, Washington. However, information on another anecic species (Wheatley and Hardman 1968, as referenced in Edwards and Bohlen 1996, p. 280; Gerard 1967, as referenced in Edwards and Bohlen 1996, p. 280) indicates deep-burrowing anecic species are less susceptible to pesticides. In addition, the prevailing information indicates the GPE is an anecic species, and anecic species have less exposure to pesticides than other earthworm life-history forms. We do not have information on GPE pesticide exposure in areas outside of the Palouse region, and the exposure will vary with the distribution, habitat types, and pesticide uses in those areas. The GPE has a wider range and occurs in more diverse habitats than previously known, and we have little information on pesticide applications occurring in those areas. Accordingly, the best available scientific information does not indicate the application of pesticides or herbicides is a threat to the GPE.

Urbanization and Rural Development

The petitioners claim that urban sprawl and rural development negatively impact GPE habitat in the Palouse and Ellensburg areas. The Ellensburg, Washington; Pullman, Washington; and Moscow, Idaho human populations increased by approximately 76, 88, and 73 percent, respectively since 1980 (Petition, p. 12; *http://www.census.gov*, figure 4). The petition states that urban development compacts soil, removes topsoil, and favors nonnative, invasive earthworms (Petition, pp. 12–13), and road construction affects remaining prairie remnants (Petition, p. 13). If urban or rural development were to occur on remnant prairie habitats in the Palouse, there may potentially be an impact to the GPE. However, the Palouse prairie is not the only habitat type used by the GPE, as the species has also been located in Douglas-fir forest in the Palouse and in ponderosa pine forest near Leavenworth, Washington (see Table 1 above).

The petitioners (Petition p. 13) expressed concern about a potential rerouting of U.S. 95 through a large prairie remnant in the Palouse bioregion south of Moscow, Idaho. The planning for this project is ongoing (Idaho Department of Transportation (IDOT) 2011a, p. 1). There were three action alternatives under consideration (IDOT 2011c, p. 1), one of which (the eastern alternative) would impact Paradise Ridge, an area where the GPE has been documented. However, the IDOT forwarded only alternatives that would have no direct impact on rare plant communities (including remnant prairie habitat) for further analysis (IDOT 2011b, p. 21, 25), and as a result, the Paradise Ridge GPE site will not be affected by the IDOT project. Urban and rural development in prairie remnants is still possible, given that Latah County, Idaho, and Whitman County, Washington, do not prohibit this type of development (Latah County Board of Commissioners 2010; Whitman County 2010); however, there are significant scientific uncertainties regarding the full extent of habitat types used by the GPE, as well as the species' distribution, range, and population trends. In summary, the best available scientific information does not indicate that urbanization and rural development are threats to the GPE.

Forest Management

The impact of forest management actions on soils varies, and uneven-aged management (*i.e.*, selective harvest) can result in machinery-induced soil compaction over a larger area than even-aged management (*i.e.*, clearcut harvest) (Harvey *et al.* 1994, p. 44). However, while selective timber harvest practices may result in soil disturbance or compaction from heavy equipment, there will be less loss of surface or soil organic matter than when clearcut timber harvest methods are used (James 2000, p. 10). Forest management operations can alter the cycling of above-ground organic materials and their incorporation into soil (Harvey *et al.* 1994, p. 11), which may result in not only impacts to soil nutrients, but also changes to soil characteristics such as water-holding capacity, aeration, drainage, and cation exchange.

The GPE has been documented in Douglas-fir forest at Moscow Mountain in the Palouse, and recently confirmed in dry ponderosa pine forest near Leavenworth, Washington (see Table 1 above), although information regarding details on the forest stand at the GPE locations, and the extent of habitats the GPE occupies in forested environments, is incomplete. Forest types have changed in the Columbia Basin since historical times, although the numbers of forested acres are not substantially different (Quigley *et al.* 1996, p. 54). The potential impacts to the GPE from forest management activities would likely depend on whether the species requires certain forest types or ages, and if so, the specific nature of the management prescription being applied in those areas. There are uncertainties with regard to whether the GPE is restricted to certain types of forests, certain ages of forest, or certain elevations or other site characteristics, or whether surface vegetation is relevant to the species. If the GPE occurs in multiple types and ages of forest, the availability of a particular forested habitat type may not be a limiting factor, and forest management may have little impact.

James stated in 1995, that he can ''confidently state that nothing is known of the impact of any management practice on any Columbia River Basin native earthworm species'' (James 1995, p. 12). However, in 2000, James stated that logging: (1) Degrades earthworm habitat, potentially to the point of causing extirpation and changes in plant communities, and (2) may degrade habitat through changing soil type, soil temperature, moisture regime, or food resources (James 2000, p. 10). In his 2000 study, James also related the primary effect of tree removal on endogeic earthworms to soil climate and the availability of surface and soil organic matter sufficient to support earthworms until second-growth plants become established. James also stated

that epigeic species would be expected to suffer most from the loss of tree cover because the preferred microhabitat would be less hospitable and ultimately less abundant, with the loss of annual leaf input, and indicated that disturbance caused from heavy equipment use may be the most deleterious to earthworms (Shaefer and others 1990, in James 2000, p. 10). However, James did not discuss how these types of activities would affect an earthworm species with a deep-burrowing, anecic, life-history strategy (James 2000, p. 10), such as the GPE. The Service recognizes that forest management activities can affect soils, temperatures, and vegetation, and the impacts would vary with types of forest management, types of forest, and habitat needs of the GPE. However, we were unable to determine how much forested habitat the GPE occupies or where it occurs in forested habitat (other than the above confirmed localities). Additional surveys will be needed to determine the extent of forested habitat occupied by the species. In addition, we have no information to indicate how GPE would respond to different types of forest management activities. Therefore, the best available information does not indicate that forest management activities represent a threat to the GPE.

Summary of Factor A

The GPE is known to occur in both grassland habitats and forested habitats in the Palouse. Native grassland habitats in the Palouse have declined to very low levels; information on changes to forested habitats in the Palouse is less well understood. The species' range outside of the Palouse region is substantially greater than was previously known, and includes portions of the eastern slope of the Cascade Mountains. Survey efforts have been limited, it is difficult to survey for the species, and effective survey methods remain to be developed. In addition, there are significant scientific uncertainties regarding the GPE's distribution, habitat diversity, biology, and population trends, which need to be resolved to be able to conduct a credible scientific assessment of potential threats to the species. The best available information is inconclusive with regard to whether soil pH is a limiting factor, or whether there are certain types of management activities that affect soil pH in a manner that presents a threat to the GPE. The literature suggests that compacting soils may result in impacts to earthworms, depending on their life-history strategy. However, there is no information with which to determine with reasonable confidence whether soil compaction is occurring in GPE habitat, and if so, whether it would result in a negative response in the species.

While there may have been historical impacts to the GPE from agricultural conversion in the Palouse, most agriculture conversion activities were completed by 1910 (McGregor, 1982, p. 109). The extent to which agricultural activities currently present a threat to the GPE is undeterminable, given the limited information available on the species' life history, its range, and the diversity of habitat types where it occurs. However, the species has not been collected in agricultural areas to date. The extent of the GPE's range and habitat types used beyond the Palouse is also unknown. While there may potentially be impacts from grazing activities, we have an incomplete understanding of the species' occupied habitat, whether grazing occurs therein, the magnitude and intensity of grazing activities in those areas, and the GPE's exposure to grazing impacts. We have some information on pesticides used in the Palouse area, and we have generalized information on pesticide toxicity to earthworms. However, we are unable to correlate that information to soils or habitats used by the GPE in the Palouse or elsewhere, and whether the GPE is exposed to those chemicals. The limited information on pesticide applications in the Ellensburg, Washington, vicinity is not instructive with regard to whether or not those activities might threaten the GPE, and there is no information related to pesticide application in the Leavenworth, Washington, GPE locality. Because of our limited knowledge of the species' range and occupied habitat, we cannot credibly evaluate the threat of urban or rural development to the species. We recognize that forest management activities can affect soils, temperatures, and vegetation, but there is no information correlating these activities to a possible negative response by the GPE. In summary, there is very little information available, and the best available scientific information does not indicate the present or threatened destruction, modification, or curtailment of the GPE's habitat or range from any of the above activities constitutes a threat to the species such that listing under the Act is warranted.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition did not identify overutilization for commercial, recreational, scientific, or educational purposes as a potential threat to the GPE. Unlike butterflies, for example, earthworms are not likely targets for collection by hobbyists. Recent records of the GPE are based on the few individuals that were killed during or after their collection (fewer than 10). While we anticipate some additional GPE mortality due to scientific collection as we learn more about the species, we have no reason to believe the loss of a few individuals for scientific purposes would present a threat to the continued existence of the species. Therefore, we conclude that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the species such that listing under the Act is warranted.

Factor C. Disease or Predation

The petition did not identify any threats to the GPE related to disease or predation. Hendrix and Bohlen (2002, p. 802) stated that imported nonnative earthworms may be vectors for plant or animal pathogens or viruses, but the authors do not correlate this potential threat to the GPE. Although James (1995, p. 11) stated that predation on earthworms can be accentuated by tilling the soil and exposing earthworms to bird predators, the correlation to the GPE is uncertain as the GPE is believed to be an anecic species and therefore may be less likely to be exposed by tilling. Also, surveys to date have not found the GPE in agricultural fields, although we acknowledge the extent of those surveys has been limited. However, the species would not be exposed to increased predation caused by ongoing tillage if it does not occupy agricultural areas. In summary, we do not have any evidence indicating that disease or predation is a threat to the GPE such that listing under the Act is warranted.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

In our 2010 90-day finding (75 FR 42064; July 20, 2010), we determined the existing regulatory mechanisms may be inadequate to address potential threats to the GPE. The petitioners claim Federal, State, or local regulations do not specifically protect the GPE or its habitat. The Washington Department of Fish and Wildlife identifies the GPE as a species of concern (WDFW 2009, p. 1), although this status does not provide regulatory protection for the species. The petition states the Palouse Subbasin Management Plan (Gilmore 2004) includes objectives to protect and restore native grassland habitat within the Palouse subbasin, and increase wildlife habitat value on agricultural land, but is voluntary in nature and

does not provide regulatory mechanisms that protect the GPE or its habitat. Habitat conversion in the Palouse may still occur, as neither Latah County, Idaho, nor Whitman County, Washington, have ordinances or regulations to prevent native habitat conversion (Latah County Board of Commissioners 2010, pp. 1–27; Whitman County 2010, pp. 1–76). However, we do not have evidence that habitat loss is a threat (see Factor A discussion). The petition also acknowledges the existence of the U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service, Environmental Protection Agency, and National Oceanic and Atmospheric Administration (NOAA) Fisheries Memorandum of Understanding (MOU, USDA Forest Service *et al.* 2003), in which the agencies agreed to voluntarily utilize the scientific findings of the Interior Columbia Basin Strategy (CBS) to guide project implementation and to revise resource management plans. The petitioners state the MOU and CBS do not address the GPE or provide regulatory mechanisms for its protection (Petition, p. 15), and claim existing regulations are ineffective in reducing the importation of nonnative earthworm species, which present a threat to the GPE. However, the best available information does not indicate that exotic earthworms represent a threat to the GPE (see Factor E discussion).

The U.S. Environmental Protection Agency (EPA) Office of Pesticide Programs evaluates which ingredients and which pesticide products can be used (registered) in the United States. The EPA evaluates the potential effects of pesticides on human health and the environment, conducts risk assessments, and works with companies to develop label instructions that ensure safety (see the National Pesticide Information Center at *http://www.npic.orst.edu/reg.htm*). One study found the use of pesticides at recommended rates had no detectable negative effects on earthworms in anecic or endogeic species (Simonsen *et al.,* 2010, cited in Johnson-Maynard, 2010, *in litt.,* p. 2). Therefore, the best available information indicates that the species is not threatened by the inadequacy of pesticide management.

Surveys for the GPE have been limited, and there are significant uncertainties regarding the species' distribution and life history, as well as the diversity of habitat types where it may be found. This type of information is essential to credibly assess whether or not existing regulatory mechanisms are adequate to address potential threats to the species. While we acknowledge the regulations and plans described above do not provide specific protections for the GPE, we have no information to indicate this lack of specific protections is resulting in threats to the species. Therefore, we find that the available information does not support a conclusion that the inadequacy of existing regulatory mechanisms is a threat to the GPE.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petitioners claim that the GPE is threatened by invasive, nonnative earthworms (Petition, p. 1). In a 3-year study of earthworms in the Palouse region of eastern Washington and Idaho, Sánchez-de León and Johnson-Maynard (2009, p. 1393) found a dominance of invasive, nonnative earthworms in both native and nonnative grasslands. Nonnative earthworms can invade new habitats, change the ecological soil functions, and displace native species (Hendrix and Bohlen 2002, p. 805; Petition, p. 16). Earthworm populations are dominated by nonnative earthworms in agricultural sites and native prairie remnants in the Palouse region (Fauci and Bezdicek 2002, p. 257; Sánchez-de León and Johnson-Maynard 2009, pp. 1396, 1399–1400; Petition, p. 16). Habitat conversion favors invasion of nonnative earthworm species that are better adapted to a disturbed or degraded environment (Petition, p. 16; James 1995, p. 5). James (1995, p. 5) stated that many exotic species occur in the Columbia Basin, possibly altering previously worm-free soils and nutrient cycling pathways, competing with native species, and generally modifying any processes linked to soil physical or chemical properties. He also stated that invasive earthworm species present a potential threat to the GPE, and described the loss of a deep-dwelling Illinois earthworm species as an example of this threat, although the particular study was not cited (James 2009, *in litt.,* p. 2). Based on the limited information that was provided, we were unable to locate the study. James stated that although invasive earthworms do not always reduce or eliminate populations of indigenous worms, the invasion cannot help, and some species may be highly competitive with, a deeper-dwelling species like the GPE, while others may not (James 2009, *in litt.,* p. 2). There are substantial weaknesses in extrapolating data from an Illinois earthworm species to the GPE, because we have no information that would indicate the responses would be similar. While the Service concludes that the GPE is anecic based on the best available information, there is some expert disagreement on the GPE's life-history strategy. However, it is unclear whether this matters in relation to invasion by nonnative earthworms, and James (2009 *in litt.* p. 2) did not present a scientific basis for using an Illinois species as a surrogate for the GPE.

We agree that a correlation of decline and extirpation of some native earthworm species with the arrival of introduced earthworm species is well documented (Hendrix and Bohlen 2002, pp. 805–806; Sánchez-de León and Johnson-Maynard 2009, pp. 1393–1394), although the cause may not always be direct. The causes of the declines of native species of earthworms are not documented, but theories center on ecosystem disturbance (Hendrix and Bohlen 2002, pp. 805–806) and competitive exclusion (James 2000, p. 8; Hendrix and Bohlen 2002, pp. 805–806). In addition, James (2009, *in litt.,* p. 2) noted that invasive earthworms do not always reduce or eliminate populations of indigenous earthworms. Depending on ecological requirements, some species may be highly competitive with a deeper-dwelling species like the GPE, and some not competitive, or there may be a combination of effects coupled with habitat modification. Co-occurrence of native and nonnative earthworm species is common both in disturbed and undisturbed ecosystems; however, it is not known if this is a transient or permanent state (Hendrix 2006, p. 1203). Ecosystem disturbance sufficient to degrade or destroy habitat for native species may be caused by the arrival of introduced worm species, or the arrival of introduced species may follow habitat degradation caused by other factors (Hendrix and Bohlen 2002, pp. 805–806). Nonnative earthworm invasions may depend on the degree of disturbance, competition with natives, and adaptability to site conditions (Hendrix and Bohlen 2002, p. 1203; Sánchez-de León and Johnson-Maynard 2009, p. 1394).

In a 2003–2005 research effort in the Palouse region of southeastern Washington and northern Idaho, Sánchez-de León and Johnson-Maynard (2009, pp. 1394–1395) compared four paired study sites representing native prairie remnants and CRP set-aside lands. The study objective was to characterize and compare native and nonnative earthworm populations in two important grassland ecosystems within the Palouse region. Their results found that one invasive earthworm species, the southern worm (*Aporrectodea trapezoides*) comprised

90 percent of the total earthworm density in their study areas (Sánchez-de León and Johnson-Maynard 2009, p. 1396). One GPE was collected at one of the four prairie remnant study sites. The authors suggested that because native earthworms are found in fragmented native habitats along with exotic earthworms, the GPE may be able to coexist with exotic species in Palouse prairie remnants. They indicated that further study would be required to determine whether the GPE is a resilient species based on its deep-burrowing behavior, or whether the results of their study demonstrate a species replacement process (Sánchez-de León and Johnson-Maynard 2009, pp. 1398).

The rarity of native earthworms in their native prairie remnant study areas lends support to the researchers' theory that native earthworms are being replaced by nonnative earthworms, even in visibly intact remnants of fragmented habitats (Sánchez-de León and Johnson-Maynard 2009, pp. 1398–1399). The researchers suggested *Apporectodea trapezoides* may compete with the GPE for food in upper layers of soil (Sánchez-de León and Johnson-Maynard 2009, pp. 1398–1399), but could not exclude the possibility that the GPE did not historically occur in high densities within these prairie remnants because of their steep slope or high rock content, the very factors that prevented these areas from being plowed and preserved them as remnant prairie (Sánchez-de León and Johnson-Maynard 2009, p. 1398). They acknowledged that these findings are inconsistent with other studies showing that native earthworms predominate in undisturbed or minimally disturbed grasslands (James 1991, pp. 2101–2109; Callaham *et al.* 2003, pp. 1079–1093; Winsome *et al.* 2006, pp. 38–53; *in* Sánchez-de León and Johnson-Maynard 2009, pp. 1397–1398).

The researchers suggested that a combination of extensive habitat fragmentation in the Palouse region, low habitat quality of remaining prairie remnants, and possible competitive interactions with nonnative earthworms could have decimated GPE populations at their study sites (Sánchez-de León and Johnson-Maynard 2009, p. 1398). They acknowledged that no information is available on GPE pre-agricultural density or distribution, but the description of the species as being abundant by Smith (1897) contrasts with the rarity of finding the earthworm today. They stated that this suggests a significant reduction in population size (Sánchez-de León and Johnson-Maynard 2009, pp. 1394, 1399), but acknowledge their sampling methodology could have influenced the results. The hand-sorting sampling method is regarded as the best method to estimate abundance of most earthworm species, but is also known to underestimate the abundance of deep-burrowing species. The researchers recommend the use of a combination of methods for future studies, including non-destructive alternatives such as electrical methods or extraction methods with chemicals of low toxicity that are more suited for deep-burrowing earthworm species (Sánchez-de León and Johnson-Maynard 2009, p. 1399).

The GPE's range is more extensive than previously known, survey efforts for this species have been limited, and effective survey protocols remain to be developed. We acknowledge conflicting opinions by earthworm researchers regarding the GPE's life-history strategy, which could influence how it interacts with exotic earthworms. However, we believe the prevailing evidence points to the GPE being a deep-burrowing anecic species, based on observations in the field by scientists who appear to be most familiar with this particular species, and the report by Smith (1897, pp. 202–203) describing burrows extending to a depth of over 15 feet in new road cuts. Endogeic worms (which the petitioners believe the GPE to be) live in the upper layers of mineral soil, whereas anecic earthworms live in deep, semi-permanent burrows. The researchers Sánchez-de León and Johnson-Maynard also acknowledge that the hand-sorting sampling method (which has apparently been applied in most earthworm surveys) underestimates the abundance of deep-burrowing species. In addition, the limited evidence available does not lead to a reasoned scientific conclusion regarding competitive interactions between exotic earthworms and the GPE. In summary, we do not have evidence to support a conclusion that competition with exotic earthworms is a threat to the GPE.

Nonnative Plants

The petitioners describe the existence of introduced annual grasses and noxious weeds in the Palouse region, including *Poa pratensis* (Kentucky bluegrass), crops, *Bromus tectorum* (cheatgrass), and *Centaurea solstitialis* (yellowstar-thistle) (Gilmore 2004, pp. 1–87), and state that it is likely these species do not provide the same quality and quantity of earthworm forage as native vegetation (Petition, p. 17). However, they did not provide any evidence to support this statement. There may be differences in nutritive value between weeds and native plants, and there may be differences in phenology (*e.g.,* nonnative plants emerging at a different time than native plants), but it is unknown if this is important to the GPE. Invasive weed control in the Palouse is difficult (Jensen, 2010, *in litt.,* p. 3; Nyamai 2009, pp. 6–7, 21–22). Native plant communities in the Palouse are susceptible to invasion by nonnative plants (Gilmore 2004, pp. 1–26; James 2000, p. 8); domination of deep-soil sites by Kentucky bluegrass is common, and in shallow soils cheatgrass and yellowstar-thistle weeds compete with native grasslands. McGregor (1982, pp. 124–125) commented that nonnative weeds, including cheatgrass, have been present in the Palouse region since the 1890s. The Draft Palouse Subbasin Management Plan (Gilmore 2004, pp. 1–86) states that exotic weed invasions are possibly the greatest threat facing the grasslands and shrublands of the arid and semiarid West today, and species-rich ecosystems are being converted to monotonous weedlands as aggressive weeds replace native plants and degrade habitat for wildlife.

There are significant scientific uncertainties regarding the distribution and life history of the GPE, and the range of habitat types it occupies is unknown. Although there have been some studies relevant to nonnative plant invasion and conversion of native habitats and ecosystems, we are unaware of any scientific studies or other data that would allow an extrapolation of these observations to the GPE. Accordingly, we have no information to indicate that the introduction of nonnative plants represents a threat to the species.

Climate Change

The petitioners noted that, because Fender and McKey-Fender (1990, p. 366) describe annual precipitation as a parameter of GPE habitat, it is likely that changing weather patterns caused by global warming will impact this species' habitat and distribution (Petition, p. 17). This citation in fact defines the lower limit of precipitation tolerated by argilophilini worm species to be about 15 in (38 cm) annually, which the authors characterize as being ''about the edge of moist forests in our area, although the range of *Driloleirus americanus* extends into treeless areas.'' Although the petition expresses a concern about future climate change and its effects on the GPE, it did not present information or data in this regard.

The Service evaluated information available in our files and queried other available information related to this potential threat. Lawler and Mathias

(2007, pp. 19–20) investigated possible climate change impacts to vascular plants, stating that plants may mature earlier, creating potential mismatches between pollinators and plants, parasites and hosts, and herbivores and food sources; increased summer temperatures and decreased summer precipitation may lead to changes in distribution of some plant species; sagebrush steppe and grasslands may contract, while dry forests and woodlands expand; and plant distribution changes will depend in part on plant water-use efficiencies. According to the United Nations Framework Convention on Climate Change (2010, p. 1), plant growth may benefit from fewer freezes and chills, but some crops may be damaged by higher temperatures, particularly if combined with water shortages. Certain weeds may expand their range into higher-latitude habitats. Higher levels of carbon dioxide should stimulate photosynthesis in certain plants, in principle. This is particularly true for C3 plants (named for their carbon fixation pathway) because increased carbon dioxide tends to suppress their photo-respiration. C3 plants make up the majority of species globally, especially in cooler and wetter habitats, and include most crop species, such as wheat, rice, barley, cassava, and potato.

It is difficult to predict how or if future changes in growth or distribution of vegetation resulting from climate change will affect local conditions for weeds, native vegetation, or both, or to predict how such changes would affect earthworms. Earthworm mortality can result from extreme temperatures, and the upper lethal temperature for different earthworm species is lower than for other invertebrates ((Edwards and Bohlen 1996, p. 146) (*e.g.,* 28 °C (82 °F) for *Lumbricus terrestris;* 37 to 37.75 °C (98.6 to 100 °F) for *Pheretima californica* (Schread 1952, as referenced in Edwards and Lofty 1977, pp. 156–157)). Earthworms tolerate higher temperatures by migrating, or burrowing deeper, but must still be able to feed on the surface or the top layers of the soil.

The petition did not present any specific information, and we are unaware of any studies, that would facilitate an evaluation of the extent to which the GPE may be affected by: (1) Increased air temperatures or soil changes; (2) earlier seasonality of plant production; or (3) changes in plant distribution. Climate change models used in the Intergovernmental Panel on Climate Change Fourth Assessment Report project increased air annual temperatures in the Pacific Northwest of, on average, 1.1 °C (2.0 °F) by the 2020s, 1.8 °C (3.2 °F) by the 2040s, and 2.9 °C (5.3 °F) by the 2080s, compared to 1970 and 1999 (averaged across all climate models); however, increased air temperature does not necessarily correlate with increased surface or soil temperatures. Projected changes in annual precipitation averaged over all models are small (+1 to +2 percent), but some models project an enhanced seasonal precipitation cycle with changes toward wetter autumns and winters, and drier summers (Littell *et al.,* 2009, p. 1). In the Pullman, Washington, area, baseline annual precipitation is estimated at 21.1 in (53.6 cm); models projecting to 2080 do not project annual precipitation below 15 in (38.1 cm) under any scenarios (Climate Impacts Group 2009, pp. 197–198). Fifteen inches (38.1 cm) of annual precipitation has been suggested as the lower limit of precipitation tolerated by argilophilini worm species, such as the GPE (Fender and McKey-Fender 1990, p. 366).

The impact of climate change on selected but economically significant crops in eastern Washington was predicted to be generally mild in the short term (*i.e.,* the next two decades), but increasingly detrimental with time (potential yield losses reaching 25 percent for some crops by the end of the century). The projected elevated carbon dioxide (CO_2) was expected to provide significant mitigation of climate change and its effects, and in fact result in important yield gains for some crops (Littell *et al.* 2009, p. 212), and it is likely that some native or nonnative plants would be similarly increased, potentially increasing the forage base for GPE.

Existing climate change projections are inadequate to allow a prediction regarding whether or how future climate change will impact the GPE or its habitat. This is further complicated by the significant uncertainties that exist regarding the species' distribution, biology, and habitat needs. However, given that the prevailing evidence indicates the species is anecic based on the results of survey efforts and the description of deep burrows associated with the species (Smith 1897, pp. 202–203), it is reasonable to conclude the species' deep-burrowing behavior will limit its exposure and increase its adaptability to increased soil temperatures. It is unclear how or whether drier summers would impact the GPE, or whether vegetation changes would impact the GPE. Therefore, based on the best available information, we conclude that climate change does not constitute a threat to the species.

Summary of Factor E

Although the decline and extirpation of some native earthworm species with the arrival of introduced earthworm species has been well documented, survey efforts for this species have been limited and effective survey protocols remain to be developed. In addition, there are conflicting opinions by earthworm researchers regarding the GPE's life history strategy, which could influence how it interacts with exotic earthworm species. Native plant communities in the Palouse bioregion are susceptible to invasion by nonnative plants, although we are unaware of any studies that correlate nonnative plant invasion and conversion of GPE habitat. The petition stated that future climate change could affect the GPE, although no supporting information or data was presented. Our examination of this concern has determined that existing climate change projections are inadequate to predict how future climate change may impact the GPE, which is further complicated because of the significant uncertainties regarding the species' distribution, life history, and the range of habitat types it occupies. In summary, there is no scientific evidence to support a conclusion that the GPE is threatened by competitive interactions with exotic earthworms, the conversion of habitat by nonnative plants, or future climate change.

Summary of Factors

A summary of our conclusions for each of the five factors is found in Table 2. More specific information for each threat considered under the five factors is available in the *Summary of Information Pertaining to the Five Factors* section above.

TABLE 2—SECTION 4(A)(1) LISTING FACTORS SUMMARY OF POTENTIAL THREATS CONSIDERED

Factor A	Habitat loss and fragmentation: The current or historical population, distribution, and range of the GPE is unknown; the habitats used by the GPE are more diverse than suggested by petitioners; survey efforts have been limited and sampling protocols remain to be developed to improve detection capabilities; there is no evidence with which to correlate current or future habitat loss with GPE abundance or status.

TABLE 2—SECTION 4(A)(1) LISTING FACTORS SUMMARY OF POTENTIAL THREATS CONSIDERED—Continued

	Soil characteristics: There is no information with which to link soil disturbance with GPE presence or absence.
	Soil compaction: There is no evidence that compaction is occurring in GPE habitat or that compaction would trigger a negative response.
	Soil chemistry: Earthworm responses to soil pH vary depending on the species, location, and life history strategy; there is insufficient information with which to establish cause-effect relationship that might be limiting to GPE; and there is no information that Palouse region soils are acidic enough to negatively affect earthworms.
	Tillage and agriculture: There is no information indicating the GPE is exposed to these activities, and no GPEs have been documented in agricultural areas.
	Grazing: There is no information with which to correlate GPE distribution and grazing areas; the species' range is unknown and surveys have been limited; grazing can sometimes benefit earthworms; and larger species like the GPE may be less impacted than smaller species.
	Chemical applications: Chemicals are applied in agricultural areas—the GPE has not been documented in agricultural areas; the available information is inadequate to determine how and whether pesticides impact soils occupied by the GPE; some studies indicate anecic species are less susceptible to pesticides; the GPE has wider range and occurs in more diverse habitats than previously known; and there is limited information on pesticide applications in known GPE areas.
	Urbanization and rural development: There are significant uncertainties regarding GPE distribution, range, population trends and extent of habitat types used; and there is no evidence that correlates urbanization and rural development with threats to the GPE.
	Forest management: Information is insufficient to determine the extent of forested habitat occupied by the GPE or where it occurs in forested habitat; and there is no information available regarding how the GPE would respond to differing types of forest management activities.
Factor B	Mortality resulting from scientific collections: Earthworms are not targets for collection by hobbyists; some mortality is expected from scientific collection, but we have no basis to conclude that removal of a few individuals for this purpose would have population-level impacts.
Factor C	Disease: We do not have any evidence indicating disease is a threat to the GPE.
	Predation resulting from exposure during tilling operations: GPEs have not been observed in agricultural areas; the GPE is believed to be an anecic species, which would be less likely to be exposed by tilling, even if it were to occupy agricultural areas.
Factor D	Non-regulatory programs and measures: Although the WDFW considers the GPE to be a species of concern and the USFS, FWS, NOAA, BLM, EPA developed a MOU agreeing to use scientific findings of the CBS to guide management plans, these are voluntary measures and have no regulatory affect;
	EPA pesticide regulations: The EPA regulates use of pesticide in the U.S.; one study found the use of pesticides at recommended rates had no detectable negative effects on anecic or endogeic earthworms; and having a better understanding of GPE distribution, life history, and diversity of habitat used is essential to credibly assess whether existing regulatory mechanisms are inadequate.
Factor E	Nonnative invasive earthworms: The co-occurrence of native and nonnative earthworms is common in both disturbed and undisturbed ecosystems, and the limited evidence available does not lead to a reasoned scientific conclusion regarding competitive interactions between the GPE and exotic earthworms;
	Nonnative plants: Significant scientific uncertainties exist regarding GPE distribution, life history, and range; the best available information does not allow an extrapolation of nonnative plant invasion to GPE threats.
	Climate change: The best available information is insufficient to determine the extent to which the GPE might be affected by increased air temperatures or soil changes, earlier seasonality of plant production, or changes in plant distribution; fifteen inches of annual precipitation was suggested as lower limit of precipitation tolerated by species such as the GPE, although models projecting out to 2080 do not show annual precipitation in the Pullman, WA vicinity falling below 15 inches under any scenarios; and significant uncertainties regarding the GPE's distribution, biology, and habitat needs frustrate efforts to draw parallels between climate change and the species' response.

A: Present or threatened destruction, modification, or curtailment of habitat or range;
B: Overutilization for commercial, recreational, scientific, or educational purposes;
C: Disease or predation;
D: Inadequacy of existing regulatory mechanisms;
E: Other natural or manmade factors.

Finding

As required by the Act, we considered the five factors in assessing whether the GPE is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the GPE. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with the most qualified GPE experts and queried universities, State agencies, conservation districts, and other entities. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The

combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

The analysis of threats (the five factors) to determine if the status of GPE meets the definition of endangered or threatened was particularly challenging, because the range of the species appears to be greater than it was originally thought to be. In addition to the Palouse area prairie, the species has been documented in dry forest habitat on the east slope of the Cascades. Survey effort for this species has been low, especially outside of the Palouse grasslands, and appropriate survey methods remain to be developed. In addition, the life history of the GPE is not completely understood. There is still some scientific debate regarding whether the GPE is an anecic or endogeic species, although the most recent field observations and prevailing scientific evidence indicates it is a deep-burrowing anecic species (Johnson-Maynard 2010, p. 2), which would result in a different exposure to threats than if it were an endogeic species. There is no scientific basis to conclude that any of the activities identified as threats by the petitioners are, in fact, threats to the GPE.

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the threats are not of sufficient imminence, intensity, or magnitude to indicate that the GPE is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of its range. Therefore, we find that the GPE does not meet the definition of an endangered or threatened species throughout its range.

Distinct Vertebrate Population Segment and Significant Portion of the Range Analysis

After assessing whether the species is endangered or threatened throughout its range, we next consider whether a distinct vertebrate population segment (DPS) or whether any significant portion of the GPE range meets the definition of endangered or is likely to become endangered in the foreseeable future (threatened), in accordance with the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (61 FR 4722, February 7, 1996). Because the GPE is not a vertebrate species, the Distinct Vertebrate Population Segment policy is not applicable to this finding.

Significant Portion of the Range

Having determined that the GPE does not meet the definition of an endangered or threatened species, we must next consider whether there are any significant portions of the range where the GPE is in danger of extinction or is likely to become endangered in the foreseeable future. Because of significant uncertainties regarding the range of the GPE, the limited survey efforts, and the paucity of information regarding its life history, there is nothing to suggest that threats are disproportionately acting on any portion of the species' range, such that the species is at risk of extinction now or in the foreseeable future. Therefore, we find that listing the GPE as an endangered or threatened species is not warranted throughout all or a significant portion of its range. The designation of critical habitat for this species as requested by the petitioner is not appropriate, based on our determination that the species does not warrant listing under the Act.

The Service continues to be interested in the status of this unique species. We request that you submit any new information concerning the status of, or threats to, the GPE to our Washington Fish and Wildlife Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the GPE and encourage its conservation.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Washington Fish and Wildlife Office (see **ADDRESSES**).

Author(s)

The primary authors of this notice are the staff members of the Washington Fish and Wildlife Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 12, 2011.

David Cottingham,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–18645 Filed 7–25–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R3–ES–2011–N107; 30120–1113–0000–C4]

Endangered and Threatened Wildlife and Plants; 5-Year Status Reviews of Seven Listed Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (Act), of seven animal and plant species. We conduct these reviews to ensure that our classification of each species on the Lists of Endangered and Threatened Wildlife and Plants as threatened or endangered is accurate. A 5-year review assesses the best scientific and commercial data available at the time of the review. We are requesting the public to send us any information that has become available since the most recent status reviews on each of these species. Based on review results, we will determine whether we should change the listing status of any of these species.

DATES: To ensure consideration, please send your written information by September 26, 2011. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For how and where to send comments or information, see ''VIII. Contacts'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: To request information, see ''VIII. Contacts'' under **SUPPLEMENTARY INFORMATION**. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY (telephone typewriter or teletypewriter) assistance.

SUPPLEMENTARY INFORMATION:

I. Why do we conduct a 5-year review?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Then, under section 4(c)(2)(B), we determine whether to remove any species from the List (delist), to

reclassify it from endangered to threatened, or to reclassify it from threatened to endangered. Any change in Federal classification requires a separate rulemaking process.

In classifying, we use the following definitions, from 50 CFR 424.02:

(A) *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, that interbreeds when mature;

(B) *Endangered species* means any species that is in danger of extinction throughout all or a significant portion of its range; and

(C) *Threatened species* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

We must support delisting by the best scientific and commercial data available, and only consider delisting if data substantiate that the species is neither endangered nor threatened for one or more of the following reasons (50 CFR 424.11(d)):

(A) The species is considered extinct;

(B) The species is considered to be recovered; or

(C) The original data available when the species was listed, or the interpretation of data, were in error.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing the species we are reviewing.

II. What species are under review?

This notice announces our active 5-year status reviews of the species.

CURRENT LISTING STATUS OF SPECIES UNDER 5-YEAR STATUS REVIEW

Common name	Scientific name	Status	Where listed	Final listing rule publication date and citation
ANIMALS				
Bat, gray	*Myotis grisescens*	Endangered	Central and Southeastern U.S.A.	April 28, 1976 (41 FR 17736).
Bat, Indiana	*Myotis sodalis*	Endangered	Eastern and Midwestern U.S.A.	March 11, 1967 (32 FR 4001).
Snake, copperbelly water	*Nerodia erythrogaster neglecta.*	Threatened	IN north of 40° N. Lat., MI, OH.	January 29, 1997 (62 FR 4183).
Mussel, scaleshell	*Leptodea leptodon*	Endangered	U.S.A. (AL, AR, IA, IL, IN, KY, MN, MO, OH, OK, SD, TN, WI).	October 9, 2001 (66 FR 51322).
Pearlymussel, Curtis'	*Epioblasma florentina curtisii*	Endangered	U.S.A. (AR, MO)	June 14, 1976 (41 FR 24062).
PLANTS				
Decurrent false aster	*Boltonia decurrens*	Threatened	U.S.A. (IL, MO).	November 14, 1988 (53 FR 45858).
Fassett's locoweed	*Oxytropis campestris* var. *chartacea.*	Threatened	U.S.A. (WI)	September 28, 1988 (53 FR 37972).

III. What do we consider in our review?

We consider all new information available at the time we conduct a 5-year status review. We consider the best scientific and commercial data that have become available since our current listing determination, or most recent status review that is accessible from our Web site *http://www.fws.gov/midwest/Endangered/recovery/5yr_rev/completed5yrs.html,* such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends (see five factors under heading ''How Do We Determine Whether a Species Is Endangered or Threatened?''); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

For the copperbelly water snake, we specifically request information that pertains only to the northern distinct population segment (DPS). The copperbelly watersnake was listed as a DPS of a vertebrate taxon. The listed DPS occurs in Michigan, Ohio, and Indiana north of 40 degrees north latitude (approximately Indianapolis, Indiana). A DPS is defined in the February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). Three elements are considered to list a population under the Act as a DPS: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) The significance of the population segment to the species to which it belongs; and (3) The population segment's conservation status in relation to the Act's standards for listing (*i.e.,* is the population segment endangered or threatened?). Distinct population segments of vertebrate species, as well as subspecies of all listed species, may be proposed for separate reclassification or for removal from the List. As required by the DPS policy, we will assess the validity of the current DPS designation during the 5-year review. The southern population (*i.e.,* in Illinois, Kentucky, and Indiana south of 40 degrees north latitude) is not listed as a threatened species at this time and is not part of this 5-year review.

IV. How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

Under section 4(b)(1) of the Act, we must base our assessment of these factors solely on the best scientific and commercial data available.

V. What could happen as a result of our review?

For each species under review, if we find new information that indicates a change in classification may be warranted, we may propose a new rule that could do one of the following:

(A) Reclassify the species from threatened to endangered (uplist);

(B) Reclassify the species from endangered to threatened (downlist); or

(C) Remove the species from the List (delist).

If we determine that a change in classification is not warranted, then the species remains on the List under its current status.

VI. Request for New Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See ''What Information Do We Consider in Our Review?'' for specific criteria. If you submit information, support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Submit your comments and materials to the appropriate U.S. Fish and Wildlife Service office listed under ''VIII. Contacts.''

Submit all electronic information in Text or Rich Text format to *FW3Midwest Region_5YearReview@fws.gov.* Please send information for each species in a separate e-mail. Provide your name and return address in the body of your message, and include the following identifier in your e-mail subject line: Information on 5-year review for [NAME OF SPECIES].

VII. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

VIII. Contacts

Send your comments and information on the following species, as well as requests for information, to the corresponding contacts. You may view information we receive in response to this notice, as well as other documentation in our files, at the following locations by appointment, during normal business hours.

Species	Contact person, phone, e-mail	Contact address
Gray bat	Dr. Paul McKenzie, (573) 234–2132, extension 107, *paul_mckenzie@fws.gov*.	Columbia Missouri Field Office, U.S. Fish and Wildlife Service, 101 Park DeVille Drive, Suite A, Columbia, MO 65203–0007.
Indiana bat	Mr. Andrew King, (812) 334–4261, extension 1216, *andrew_king@fws.gov*.	Bloomington Field Office, U.S. Fish and Wildlife Service, 620 S. Walker Street, Bloomington, IN 47403–2121.
Copperbelly water snake	Ms. Barbara Hosler, (517) 351–6326, *barbara_hosler@fws.gov*.	East Lansing Field Office, U.S. Fish and Wildlife Service, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823–6316.
Scaleshell mussel and Curtis pearlymussel.	Mr. Andy Roberts, (573) 234–2132, extension 110, *andy_roberts@fws.gov*.	Columbia Missouri Field Office, U.S. Fish and Wildlife Service, 101 Park DeVille Drive, Suite A, Columbia, MO 65203–0007.
Boltonia decurrens	Ms. Jody Millar, (309) 757–5800, extension 202, *jody_millar@fws.gov*.	Rock Island Field Office, U.S. Fish and Wildlife Service, 1511 47th Avenue, Moline, IL 61265.
Oxytropis campestris var. *chartacea*.	Ms. Catherine Carnes, (920) 866–1732, *cathy_carnes@fws.gov*.	Green Bay Field Office, U.S. Fish and Wildlife Service, 2661 Scott Tower Drive, WI 54229–9565.

IX. Authority

We publish this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 14, 2011.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2011–18893 Filed 7–25–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R3–ES–2011–0025; MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Frigid Ambersnail as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the frigid ambersnail (*Catinella gelida*) under the Endangered Species Act of 1973, as amended (Act). After reviewing all available scientific and commercial information, we find that listing the frigid ambersnail is not warranted because currently living individuals that were identified as frigid ambersnails do not constitute a unique and valid, currently living taxon; therefore, it is not considered to be a listable entity under the Act.

DATES: The finding announced in this document was made July 26, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R3–ES–2011–0025. The complete file for this finding is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Rock Island

Ecological Services Field Office, 1511 47th Avenue, Moline, IL 61265; phone (309) 757–5800. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Jody Millar (see **ADDRESSES**).

Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register.**

Previous Federal Actions

Federal action for the frigid ambersnail began on July 30, 2007, after we received a petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians) requesting that the Service: (1) Consider all full species in our mountain-prairie region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, proposed for listing, or candidates for listing; and (2) list each species as either endangered or threatened (Forest Guardians 2007, pp. 1–37). We acknowledged the receipt of the petition in a letter to the Forest Guardians, dated August 24, 2007 (Slack 2007, p. 1). In that letter we stated, based on preliminary review, that we found no compelling evidence to support an emergency listing for any of the species covered by the petition.

On March 19, 2008, WildEarth Guardians filed a complaint (1:08–CV–472–CKK) indicating that the Service had failed to make 90-day petition findings under section 4 of the Act for the 206 mountain-prairie species, including the frigid ambersnail. On February 5, 2009, we published a 90-day finding (74 FR 6122) for 165 of the 206 mountain-prairie species, which did not include the frigid ambersnail. On March 13, 2009, the Service and WildEarth Guardians filed a stipulated settlement in the District of Columbia Court, agreeing that the Service would submit to the **Federal Register** a finding as to whether WildEarth Guardians' petition presented substantial information indicating that the petitioned action may be warranted for 38 mountain-prairie region species by August 9, 2009 (*WildEarth Guardians* v. *Salazar* 2009, case 1:08–CV–472–CKK). On August 18, 2009, we published a 90-day finding (74 FR 41649) for 38 mountain-prairie region species, and initiated status reviews on 29 of those species, including the frigid ambersnail.

On January 8, 2010, WildEarth Guardians filed a complaint indicating that the Service had failed to complete a 12-month finding on the frigid ambersnail, and on January 20, 2010, they filed an amended complaint. On June 29, 2010, this complaint was consolidated in the District of Columbia District Court along with 11 other individual cases filed by WildEarth Guardians, all related to multiple-species petitions. This litigation is currently unresolved.

This notice constitutes the 12-month finding on the July 24, 2007, petition to list the frigid ambersnail as endangered.

Range

The frigid ambersnail is a prehistoric snail known from the Pleistocene period, which spanned from 1.8 million to approximately 10,000 years ago. The species has an extensive fossil record. Based on that fossil record, its historical range included eight states: Iowa, Illinois, Indiana, Louisiana, Mississippi, Missouri, Ohio, and New York (Frest 1991, p. 17). Individuals, that at the time were thought to be living specimens of frigid ambersnails, were subsequently found in the Black Hills of South Dakota and south of Green Bay in Wisconsin (Frest and Johannes 2002, pp. 73–74). Current, putative populations are only now known from Iowa, the Black Hills National Forest of South Dakota and, possibly, Wisconsin. Currently, taxonomy regarding these extant populations is unclear as to whether these are frigid ambersnails (as described from the prehistoric fossils) or members of a different, likely more common, taxon.

Taxonomy

Catinella gelida was initially described as a widespread prehistoric fossil. The genus *Catinella* belongs to phylum Mollusca, class Gastropoda, order Stylommatophora (terrestrial snails and slugs), and family Succineidae. Baker (1927, pp. 118–119) first described the fossil shell of the frigid ambersnail as a subspecies of *Succinea grosvenorii* (Baker 1927). Baker (1927) describes the fossil species as having a small (less than 10 mm (0.4 inches), elongated shell. The whorls (a single turn in the spiral of the shell) are convex and separated by deep sutures—the last whorl is small, flat-sided, and slightly convex. The spire (the part of the shell that consists of all of the whorls, except the body whorl) is long and acute with a rounded aperture (main opening of the shell) that is about half as long as the shell. The columella (central column inside the shell) is straight, gently curving to the parietal wall (margin of the aperture and part of the wall of the body whorl that is closest to the columella), and does not form a distinct angle. The slight callus (thickened calcareous deposit which may be present on the parietal wall of the aperture of the adult shell) is spread over the parietal wall. The sculpture (ornamentation on the outer surface of the shell) is fine with vertical striae (thin, narrow grooves).

Thirty-six years after Baker (1927) first described the species, the fossil form was reclassified as distinct from *Succinea grosvenori* and retained as a separate species named *Catinella gelida* by Leslie Hubricht (Hubricht 1963, pp. 137–138). As Hubricht (1963, p.137) stated: ''This species [*Succinea grosvenori gelida*], is certainly not related to *Succinea grosvenori* as now understood. Some shells resemble a slender *Catinella vermeta* (Say), and others resemble shells of *Catinella wandae* (Webb) from Grand Teton National Park, Teton County, Wyoming, and it is possible that the name *gelida* has been applied to more than one species. In view of the impossibility of demonstrating the relationship to either of the above species by anatomical studies, *Catinella gelida* is here retained as a separate species.'' As Hubricht states, identification of the fossil form used fossil shell characterics only.

In 1985, Terrence Frest (1985, p. 4) described what was thought to be the first live specimen of the frigid ambersnail from the carbonate cliffs of Iowa. The basis for his identification was geologic location and shell

morphology. Prior to this, the species was thought to only occur in fossil form. What were thought to be additional relic populations were then identified in the Black Hills of South Dakota and south of Green Bay in Wisconsin (Frest and Johannes 2002, pp. 73–74).

Frest's (1991, p. 16) described the physical appearance of individuals in those relic populations by expanding on Baker's (1927, pp. 118–119) description of the fossil form of frigid ambersnail. However, Frest's (1991, p. 16) description still provides information on the shell only, stating that ''Live specimens are slightly smaller on average than fossil (*e.g.,* average length 7.0 rather than 7.0–8.0 mm), but otherwise identical. In life the color is a peculiar light yellow-green; the body is dark grey to nearly black. The sculpture on both fossil and recent specimens is rather stronger than in most Succineidae.''

A number of researchers (*e.g.,* Patterson 1971, p. 133; Grimm 1996, p. 1; Coles and Walsh 1999, p. 32; Pigati *et al.* 2010, p. 5) have suggested that for accurate identification of species of living land snails within the Succineidae family, supporting anatomical information is critical in addition to morphological information. Patterson (1971, p. 133) stated the following in his taxonomic studies of the land snail's family Succineidae, ''The taxonomic placement of most species of the Succineidae is still based largely on shell characters, which, because of little diversity and considerable convergence, give only fragmentary or unreliable aid in systematic analyses. Currently, features of the male and female reproductive tract, the radula and jaw, and to some extent, patterns of pigmentation, are being used to characterize some genera and species. However, to date, only a very few species have been studied with regard to such morphological characters, which leaves the systematics of the Succineidae in an inadequate and confused state.''

Grimm (1996, p. 1) and Coles and Walsh (1999, p. 32) also considered the use of additional anatomical features, such as genitalic structure, to be crucial for the accurate identification of extant *Catinella* species. Pigati *et al.* (2010, p. 5) recently described the need for additional morphological characteristics to distinguish among species for the Succineidae family and the genus *Catinella:* ''In the fossil record, species-level identification of fossil shells is possible for most small terrestrial gastropods and, therefore, the results of our investigation of modern gastropods can be applied directly to the fossil record. An exception is the Succineidae family, which is composed of three genera (*Catinella, Oxyloma,* and *Succinea*) that are difficult to differentiate in modern faunas. Their simple shells exhibit few diagnostic characteristics and, therefore, species-level identification is based on soft-body reproductive organ morphology, which is rarely preserved in the fossil record.''

In 2002, Frest and Johannes acknowledged the difficulty of using a fossil form as the originally described specimen of frigid ambersnail to identify living individuals. However, they continued to support the species classification, stating that, ''as it happens, shell characters of *C. gelida* are sufficiently distinctive as to make it unlikely to be confused with other described North American succineids. Preliminary dissections of specimens from the Iowa-Minnesota colonies confirm placement of those specimens in *Catinella.* The body color is unlike any other described species. The few live South Dakota specimens seen appear identical in morphology to those from Iowa'' (Frest and Johannes 2002, p. 70). Although Frest and Johannes (2002, p. 7) have stated that fossil shell morphological characteristics alone were adequate to classify a living specimen, current researchers (such as Anderson (2005) and Nekola (2009, 2010) (see below)) do not support this assertion.

Anderson (2005) examined *Catinella*-like shells in Wind Cave National Park, South Dakota. In her analysis, she identified the *Catinella* specimens to genus level only, noting the conflicting opinion on the use of shell characteristics for identification to species level (Anderson 2005, p. 189). She cites Burch (1962) and Hoagland and Davis (1987) as cautioning against using such characteristics alone in identifying species in this taxonomic family.

Jeffrey Nekola is a professor with the University of New Mexico and is considered an expert in land snails, has authored numerous publications on the topic, and has field experience with fauna of the carbonate cliffs of Iowa and the surrounding area. Nekola indicated several issues with the classification of the living frigid ambersnail in response to our publication of a 90-day finding (74 FR 41649) and initiation of status review on a petition to list the frigid ambersnail (*Catinella gelida*) as endangered. Nekola (2010, pers. comm.) stated that there is not a published account of a dissection of the frigid ambersnail. Nekola has examined living snail soft body parts from ambersnails (from Nekola 1998 and 2003) that met the description of the fossil frigid ambersnail (as described by Frest 1991). He (Nekola pers. comm. 2010) subsequently analyzed this material and found the soft body parts to be similar to those found in the slope ambersnail (*C. wandae*). In addition, Nekola (2009, p. 103) questions the validity of using soft body parts for the taxonomic identification of species in this genus. He notes that the structure of the genitalia in this group of snails is highly variable and that, looking at genitalia, individuals may resemble different species as they pass through various stages of development from embryo to adult (Nekola 2009, p. 103). This is supported by Coles (2010, pers. comm.), who stated that based on his own work, the relative size and development of the male *Catinella* genital appendix can vary with age.

Because of the difficulty in defining characteristic soft parts, Nekola now believes that the only positive way to distinguish species in *Catinella's* group is to look at genetic data within and between populations, at the species and genus levels (Nekola 2009, p. 103). Ostlie (2009, p. 51) supports obtaining additional information, such as analysis of DNA, to confirm identification of the species.

Based on the best available current scientific information, the validity of the frigid ambersnail as an extant species has reasonably been questioned. The frigid ambersnail (*Catinella gelida*) is not recognized as a valid extant species or subspecies by the Integrated Taxonomic Information System (ITIS 2011) or the Council of Systematic Malacologists and the American Malacological Union (Turgeon *et al.* 1998, p. 143). Uncertainties regarding taxonomic classification remain not only for the genus *Catinella,* but also for members of the snail family Succineidae. In recent analyses, species designation for members of this family has been determined to be too questionable to differentiate the species using shell appearance and location alone (Burch 1962, p. 67; Hoagland and Davis 1987, pp. 518–519; Anderson 2005, p. 189; Nekola 2003b, p. 8; Barthel and Nekola 2000, p. 24). Furthermore, using soft body parts to identify species in this snail family also appears questionable, especially as the characteristics of those body parts change as the individuals mature (Nekola 2009, p. 103; Coles 2010, pers. comm.).

In summary, the taxonomic identity of the extant snails that have been referred to as the ''frigid ambersnail'' has been substantially questioned in recent years. While some individual researchers

continue to recognize currently living individuals of ambersnail as *Catinella gelida,* this entity is not widely recognized as an extant species or subspecies by the scientific community at this time. The type of additional information that may permit a formal description may include a more thorough description of an extant type specimen, an evaluation of various lines of evidence (morphological, ecological, biogeographical, genetic) relevant to its taxonomic status, resolution of any discrepancies in taxonomic nomenclature, or a combination of these (*e.g.,* Weaver 2006, pp. 49–65), and that the taxon be accepted as valid by widely recognized sources (*e.g.,* Turgeon *et al.* 1998, entire; ITIS 2010).

Therefore, we find based on the best information available, that *Catinella gelida* is not a modern living (extant) species. *Catinella gelida* was described from a fossil, and the most current information now indicates that the currently living specimens that were classified as frigid ambersnail were likely misclassified, and are likely not *Catinella gelida.* The taxonomy of these living ambersnails is uncertain. *Catinella gelida* itself, as described from the fossil specimen, likely exists only in fossil form, and the currently living individuals likely belong to a different taxon. Therefore, we find that the currently living specimens, that were previously thought to be frigid ambersnail, are not valid taxonomically. Although additional study could affect the taxonomic conclusion of this finding, the taxonomic identity of the modern living (extant) frigid ambersnail has not been confirmed as of this date by current species experts.

Finding

We have carefully assessed the best scientific and commercial information available regarding the taxonomic status of the frigid ambersnail (*Catinella gelida*). We reviewed the petition, available published and unpublished scientific and commercial information, and information submitted to us during the information collection period on our status review following our 90-day finding. We also consulted with recognized experts. The frigid ambersnail is not recognized as an extant species or subspecies by the scientific community, and the taxonomic status of extant specimens is currently uncertain. The named petitioned entity, *Catinella gelida,* is extinct and only exists in fossil form. Modern, existing populations, that were originally described as *C. gelida,* are not *C. gelida,* and their taxonomic identity remains uncertain. Consequently, the Service does not at this time consider the petitioned entity, the frigid ambersnail, to be a listable entity under section 3(16) of the Act (16 U.S.C. 1532(16)). The Service encourages additional scientific investigations that will resolve the significant uncertainties concerning the taxonomy of frigid ambersnail. Because we have concluded the frigid ambersnail is not a listable entity, we will not further evaluate this ambersnail under section 4(a)(1) of the Act. On the basis of this review, we find that listing the frigid ambersnail as endangered or threatened is not warranted because the frigid ambersnail does not meet the definition of a ''species'' under the Act.

References Cited

A complete list of all references cited herein is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor at the Rock Island Ecological Services Office (see **ADDRESSES** section).

Author

The primary authors of this document are the staff members of the Rock Island Ecological Services Field Office, Moline, Illinois (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 13, 2011.

David Cottingham,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–18855 Filed 7–25–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 76, No. 143

Tuesday, July 26, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0068]

Notice of Request for Extension of Approval of an Information Collection; Nomination Request Form; Animal Disease Training

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 training related to animal diseases.

DATES: We will consider all comments that we receive on or before September 26, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0068-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0068, 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-2011-0068* 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 training related to animal diseases, contact Ms. Alicia D. Love, Training Technician, Professional Development Staff, VS, APHIS, 4700 River Road Unit 27, Riverdale, MD 20737; (301) 734–0677. 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: Nomination Request Form; Animal Disease Training.

OMB Number: 0579–0353.

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, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of animal diseases and pests and for eradicating such diseases when feasible. In connection with this mission, the Veterinary Services (VS) program of APHIS provides vital training to State, Tribal, and industry representatives and academic personnel to prepare them to respond to an animal disease event, including disease eradication activities and sample collection.

Individuals who wish to attend animal disease-related training must submit a Nomination Request Form (VS–1–5) to VS to help the program coordinate courses and select participants. VS develops rosters with course participants' names and their contact information to notify them of future training courses and to encourage contact among participants throughout their careers.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.3 hours per response.

Respondents: State, Tribal, and industry representatives; and academic personnel.

Estimated annual number of respondents: 100.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 100.

Estimated total annual burden on respondents: 30 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 20th day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–18846 Filed 7–25–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0114]

Notice of Decision To Authorize the Importation of Fresh Edible Flowers of Izote, Immature Inflorescences of Pacaya, Immature Inflorescences of Chufle, and Fresh Leaves of Chipilin From El Salvador Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation into the continental United States of fresh edible flowers of izote, immature inflorescences of pacaya, immature inflorescences of chufle, and fresh leaves of chipilin from El Salvador. Based on the findings of four pest risk analyses, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh edible flowers of izote, immature inflorescences of pacaya, immature inflorescences of chufle, and fresh leaves of chipilin from El Salvador.

DATES: *Effective Date:* July 26, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip B. Grove, Regulatory Coordinator, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737–1236; (301) 734–6280.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may authorize the importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on January 25, 2011 (76 FR 4278–4279, Docket No. APHIS–2010–0114), in which we announced the availability, for review and comment, of four pest risk analyses that evaluate the risks associated with the importation into the continental United States of edible fresh flowers of izote (*Yucca guatemalensis* Baker), immature inflorescences of pacaya (*Chamaedorea tepejilote* Liem.), immature inflorescences of chufle (*Calathea macrosepala* K. Schumm), and fresh leaves of chipilin (*Crotalaria longirostrata* Hook and Arn.) from El Salvador. We solicited comments on the notice for 60 days ending on March 28, 2011. We received three comments by that date, from a State department of natural resources, a State department of agriculture, and the Guatemalan department of agriculture.

One commenter asked that we expand the pest risk analyses to allow for the importation of fresh edible flowers of izote, immature inflorescences of pacaya, immature inflorescences of chufle, and fresh leaves of chipilin from Guatemala in addition to El Salvador.

APHIS would be willing to work with the national plant protection organization (NPPO) of Guatemala in regards to this issue. In order for those commodities to be considered for importation, the Government of Guatemala must submit a formal request to APHIS, followed by submission of the information required in 7 CFR 319.5(d) by the Guatemalan NPPO.

The remaining commenters raised concerns regarding the risks associated with the importation of fresh leaves of chipilin, fresh flowers of izote, and immature inflorescences of pacaya from El Salvador. One commenter stated that fresh leaves of chipilin from El Salvador should not be allowed into the United States since chipilin, as a legume, may serve as a potential host for soybean rust or other diseases or pests of soybeans. The commenter additionally opposed importation of fresh leaves of chipilin if chipilin has the potential to become established as an invasive species.

Fresh leaves of chipilin were identified as a potential host for the soybean rusts *Phakopsora meibomiae* and *Uromyces crotalariae* in the pest risk analysis for that commodity. The phytosanitary risks posed by these pests are addressed with the following mitigations: (1) Each consignment of fresh leaves of chipilin must be inspected by the NPPO of El Salvador and accompanied by a phytosanitary certificate issued by the NPPO stating that the fresh leaves of chipilin in that consignment have been inspected and found free of *Phakopsora meibomiae* and *Uromyces crotalariae;* and (2) Each shipment is subject to inspection upon arrival at the port of entry in the United States. Rust symptoms, which consist of tan to reddish brown lesions, are macroscopic in nature and may be easily found during inspections. If the commenter is aware of additional diseases or pests of fresh leaves of chipilin that were not included in the pest risk analysis, we would consider this new information for further analysis. In addition, since we will be importing only nonpropagative fresh leaves of chipilin for consumption, we consider the risk of potential establishment of chipilin as an invasive species to be negligible.

The second commenter did not support the importation of fresh flowers of izote from El Salvador. The commenter stated that there were no mitigation measures listed in the PRA for the gray pineapple mealybug (*Dysmicoccus neobrevipes*). In addition, the commenter did not support the importation of immature inflorescences of pacaya from El Salvador. The commenter stated that there were similarly no mitigation measures identified in the PRA for the bean slug (*Sarasinula plebeia*).

Both the gray pineapple mealybug and the bean slug are covered in our risk management documents. The phytosanitary risks posed by these pests are addressed by the following mitigations: (1) Each consignment of fresh flowers of izote or immature inflorescences of pacaya must be inspected by the NPPO of El Salvador

[1] To view the notice, the pest risk analyses, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0114.*

and accompanied by a phytosanitary certificate issued by the NPPO stating that the fresh flowers of izote or immature inflorescences of pacaya in that consignment have been inspected and found free of the gray pineapple mealybug or the bean slug; and (2) Each shipment is subject to inspection upon arrival at the port of entry in the United States. Inspection is considered effective at finding external feeding pests such as the gray pineapple mealybug and the bean slug and excluding infested shipments from entering commerce. The symptoms of such infestations are macroscopic in nature. Gray pineapple mealybug infestation causes wilt, which is characterized by discoloration of leaves to yellows or reds and the loss of rigidity in leaves. Bean slug infestation is accompanied by leaf damage, which is the result of feeding.

Therefore, in accordance with the regulations in 319.56–4(c)(2)(ii), we are announcing our decision to authorize the importation into the United States of fresh edible flowers of izote, immature inflorescences of pacaya, immature inflorescences of chufle, and fresh leaves of chipilin from El Salvador provided that:

- The flowers, immature inflorescences, or leaves are subject to inspection upon arrival in the United States and comply with all applicable provisions of 319.56–3;
- The flowers, immature inflorescences, or leaves are inspected in the country of origin by an inspector or an official of the NPPO of El Salvador, and have been found free of one or more specific quarantine pests identified by the risk assessment as likely to follow the import pathway; and
- The flowers, immature inflorescences, or leaves are imported as commercial consignments only.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to these specific measures, the fresh edible flowers of izote, immature inflorescences of pacaya, immature inflorescences of chufle, and fresh leaves of chipilin from El Salvador will be subject to the general requirements listed in 319.56–3 that are applicable to the importation of all fruits and vegetables.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 20th day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–18848 Filed 7–25–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0072]

Plants for Planting Whose Importation Is Not Authorized Pending Pest Risk Analysis; Notice of Availability of Data Sheets for Taxa of Plants for Planting That Are Quarantine Pests or Hosts of Quarantine Pests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have determined that 41 taxa of plants for planting are quarantine pests and 107 taxa of plants for planting are hosts of 13 quarantine pests and therefore should be added to our lists of taxa of plants for planting whose importation is not authorized pending pest risk analysis. We have prepared data sheets that detail the scientific evidence we evaluated in making the determination that the taxa are quarantine pests or hosts of quarantine pests. We are making these data sheets available to the public for review and comment.

DATES: We will consider all comments that we receive on or before September 26, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0072-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0072, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

The data sheets and any comments we receive may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0072* 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: Dr. Arnold Tschanz, Senior Plant Pathologist/Senior Risk Manager, Plants for Planting Policy, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Plants for Planting'' (7 CFR 319.37 through 319.37–14, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of plants for planting (including living plants, plant parts, seeds, and plant cuttings) to prevent the introduction of quarantine pests into the United States. *Quarantine pest* is defined in § 319.37–1 as a plant pest or noxious weed that is of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled.

In a final rule published in the **Federal Register** on May 27, 2011 (76 FR 31172–31210, Docket No. APHIS–2006–0011), and effective on June 27, 2011, we established in § 319.37–2a a new category of plants for planting whose importation is not authorized pending pest risk analysis (NAPPRA) in order to prevent the introduction of quarantine pests into the United States. The final rule established two lists of taxa whose importation is NAPPRA: A list of taxa of plants for planting that are quarantine pests, and a list of taxa of plants for planting that are hosts of quarantine pests. For taxa of plants for planting that have been determined to be quarantine pests, the list will include the names of the taxa. For taxa of plants for planting that are hosts of quarantine pests, the list will include the names of the taxa, the foreign places from which the taxa's importation is not authorized, and the quarantine pests of concern. The final rule did not add any taxa to the NAPPRA lists.

Paragraph (b) of § 319.37–2a describes the process for adding taxa to the NAPPRA lists. In accordance with that process, this notice announces our determination that 41 taxa of plants for planting are quarantine pests and 107 taxa of plants for planting are hosts of 13 quarantine pests.

This notice also makes available data sheets that detail the scientific evidence we evaluated in making the determination that the taxa are quarantine pests or hosts of a quarantine

pest. The data sheets include references to the scientific evidence we used in making these determinations.

A complete list of the taxa of plants for planting that we have determined to be quarantine pests or hosts of quarantine pests, along with the data sheets supporting those determinations, may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the list and data sheets by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

For taxa of plants for planting that are hosts of quarantine pests, the data sheets specify the countries from which the taxa's importation would not be authorized pending pest risk analysis. In most cases, the importation of the taxa would not be allowed from any country. In some cases, the taxa would be allowed to be imported from Canada. We would allow such importation when Canada is free of the quarantine pest for which the taxa are hosts and when Canada's import regulations and our restrictions specific to Canada ensure that the pest would not be introduced into the United States through the importation of the taxa from Canada.

In a few cases, the taxa would be allowed to be imported from countries that are currently exporting the taxa to the United States, subject to restrictions in a Federal Order that was issued previously. We would continue to allow such importation based on our experience with importing those taxa of plants for planting and our findings, through inspection, that they are generally pest free, and based on our determination that the restrictions in the Federal Order are sufficient to mitigate the risk associated with the quarantine pest in question.

After reviewing any comments we receive, we will announce our decision regarding the addition of the taxa described in the data sheets to the NAPPRA lists in a subsequent notice. If the Administrator's determination that the taxa are quarantine pests or hosts of quarantine pests remains unchanged following our consideration of the comments, then we will add the taxa described in the data sheets to the appropriate NAPPRA list.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 20th day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–18845 Filed 7–25–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2011 Through June 30, 2012

Correction

In notice document 2011–18257 appearing on pages 43254–43256 in the issue of July 20, 2011, make the following correction:

On page 43255, the table labeled ''Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes per Home (Per month rates in U.S. dollars)'' should read:

	Initial 50	Next 150	Next 800	Each addl
CONTIGUOUS STATES	106	81	63	55
ALASKA	171	130	102	90
HAWAII	124	94	74	65

[FR Doc. C1–2011–18257 Filed 7–25–11; 8:45 am]

BILLING CODE 1505–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chequamegon Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Chequamegon Resource Advisory Committee will meet in Park Falls, Wisconsin. 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 hold a meeting to review Title II projects and recommend funding of projects in accordance with Public Law 110–343.

DATES: The meeting will be held on August 30, 2011, and will begin at 12:30 p.m.

ADDRESSES: The meeting will be held at the Forest Service Park Falls Office, Large Conference Room, 1170 4th Ave South, Park Falls, WI. Written comments should be sent to Sarah Yoshikane, Chequamegon-Nicolet National Forest, P.O. Box 578, 113 East Bayfield St., Washburn, WI 54891. Comments may also be sent via e-mail to *syoshikane@fs.fed.us,* or via facsimile to 715–373–2878.

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 Chequamegon-Nicolet National Forest, 113 East Bayfield St., Washburn, WI 54891. Visitors are encouraged to call ahead to 715–373–2667 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Sarah Yoshikane, RAC coordinator, USDA, Chequamegon-Nicolet National Forest, 113 East Bayfield St., Washburn, WI 54891; (715) 373–2667; e-mail *syoshikane@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) Review and status updates on approved Title II projects (2) Recommend funding of Title II project proposals in accordance with Public Law 110–343; and (3) 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 20, 2011.

Owen C. Martin,

Deputy Forest Supervisor.

[FR Doc. 2011–18810 Filed 7–25–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Yavapai County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yavapai County Resource Advisory Committee (RAC) will meet in Prescott, Arizona. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to orientate new committee members to the Secural Rural Schools Act, roles of members, guidelines for Title II, and the Federal Advisory Committee Act.

DATES: The meeting will be held August 11, 2011; 9 a.m to 2 p.m.

ADDRESSES: The meeting will be held at the Prescott Public Library, Founders Suite A, 215 E. Goodwin Street, Prescott, AZ 86303.

FOR FURTHER INFORMATION CONTACT: Debbie Maneely, RAC Coordinator, Prescott National Forest, 344 S. Cortez, Prescott, AZ 86301; (928) 443–8130 or *dmaneely@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Welcome and introductions; (2) Project Discussion, Questions-Answers; (3) review and ranking of projects submitted for Round 2; (4) next meeting agenda, location, and date.

Dated: July 19, 2011.

Pete Gordon,

Acting Forest Supervisor.

[FR Doc. 2011–18811 Filed 7–25–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Yavapai County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yavapai County Resource Advisory Committee (RAC) will meet in Prescott, Arizona. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to orientate new committee members to the Secural Rural Schools Act, roles of members, guidelines for Title II, and the Federal Advisory Committee Act.

DATES: The meeting will be held August 24, 2011; 9 a.m to 2 pm.

ADDRESSES: The meeting will be held at the Highland Center, 1375 S. Walker Road, Prescott, AZ 86303.

FOR FURTHER INFORMATION CONTACT: Debbie Maneely, RAC Coordinator, Prescott National Forest, 344 S. Cortez, Prescott, AZ 86301; (928) 443–8130 or *dmaneely@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Welcome and introductions; (2) Project Discussion, Questions-Answers; (3) review and ranking of projects submitted for Round 2; (4) next meeting agenda, location, and date.

Dated: July 19, 2011.

Pete Gordon,

Acting Forest Supervisor.

[FR Doc. 2011–18814 Filed 7–25–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sabine Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sabine Resource Advisory Committee will meet in Hemphill, Texas. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to discuss New Title II Project Proposals.

DATES: The meeting will be held Wednesday, September 7, 2011, 3:30 p.m.

ADDRESSES: The meeting will be held at the Sabine NF Office, 5050 State Hwy 21 East, Hemphill, TX 75948. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 5050 State Hwy 21 East, Hemphill, TX 75948. Please call ahead to (409) 625–1940 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: William E. Taylor, Jr., Designated Federal Officer, Sabine National Forest, 5050 State Hwy. 21 E., Hemphill, TX 75948: *Telephone:* 936–639–8501 or *e-mail: etaylor @fs.fed.us*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION CONACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: The purpose of the meeting is to discuss/approve New Title II Project Proposals. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 1, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 5050 State Hwy 21 East, Hemphill, TX 75948 or by e-mail to *etaylor@fs.fed.us* or via facsimile to 409–625–1953.

Dated: July 20, 2011.FR

William E. Taylor, Jr.

Designated Federal Officer, Sabine National Forest RAC.

[FR Doc. 2011–18803 Filed 7–25–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–847; C–122–848]

Antidumping Duty Investigation and Countervailing Duty Investigation of Hard Red Spring Wheat From Canada: Notice of Court Decision and Amended Revocation of Countervailing and Antidumping Duty Orders

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

SUMMARY: On April 19, 2011, the United States Court of Appeals for the Federal Circuit (''CAFC''), in *Canadian Wheat Board* v. *United States,* 2010–1083 (Fed.

Cir. 2011) (''*Wheat Board (CAFC)''*), held that the Department of Commerce (''the Department'') was required by law to instruct U.S. Customs and Border Protection (''CBP'') to liquidate all unliquidated entries of hard red spring wheat from Canada without regard to antidumping and countervailing duties. The CAFC's holding is now final and conclusive. Consistent with that holding, we are amending the revocation of these orders and instructing CBP to liquidate all unliquidated entries pursuant to the CAFC decision in *Wheat Board (CAFC).*

DATES: *Effective Date:* July 26, 2011.

FOR FURTHER INFORMATION CONTACT: Christine Taylor or Nancy Decker, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–8319 and (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Canadian Wheat Board and Canadian government challenged the International Trade Commission's (''ITC'') final determination that the United States industry was being materially injured by reason of imports from Canada of hard red spring wheat before a North American Free Trade Agreement (''NAFTA'') Panel. As a result of that litigation, the ITC issued a remand redetermination that concluded that a domestic industry was not materially injured or threatened with material injury by reasons of imports of Canadian hard red spring wheat, and the NAFTA Panel affirmed that remand redetermination. *North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Completion of Panel Review,* 71 FR 4896 (Jan. 30, 2006). The Department therefore revoked the antidumping and countervailing duty orders of hard red spring wheat from Canada, effective January 2, 2006. *See Antidumping Duty Investigation and Countervailing Duty Investigation of Hard Red Spring Wheat from Canada: Notice of Panel Decision, Revocation of Countervailing and Antidumping Duty Orders and Termination of Suspension of Liquidation,* 71 FR 8275 (Feb. 16, 2006). The Department's revocation stated, however, that the revocation did not ''affect the liquidation of entries made prior to January 2, 2006'' *See Id.*

The Canadian Wheat Board and Canadian government challenged the Department's determination that its revocation did not apply to pre-January 2, 2006, entries at the Court of International Trade (''CIT''). On September 1, 2009, the CIT held that the Department must direct CBP to liquidate all pre-January 2, 2006, entries without regard to antidumping and countervailing duties. *See Canadian Wheat Board* v. *United States,* 637 F. Supp. 2d 1329 (Sept. 1, 2009). The Department appealed the CIT's holding and, on April 19, 2011, in *Wheat Board (CAFC),* the CAFC reached the same conclusion as the CIT. *See Wheat Board (CAFC),* 2010–1083 at *18.

Accordingly, the Department is now amending its February 16, 2006, revocation of the antidumping and countervailing duty orders covering hard red spring wheat from Canada, and will instruct CBP to: (1) Release any cash deposits or bonds, and proceed with liquidation of all unliquidated entries of hard red spring wheat from Canada without regard to antidumping duties and countervailing duties; and (2) refund, with interest, antidumping and countervailing duty cash deposits collected pursuant to the revoked antidumping and countervailing duty orders.

Dated: July 19, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–18882 Filed 7–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–826]

Paper Clips From the People's Republic of China: Continuation of the Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (''Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty order on paper clips from the People's Republic of China (''PRC'') would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: *Effective Date:* July 26, 2011.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Charles Riggle, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION: On January 3, 2011, the Department initiated the third sunset review of the antidumping duty order on paper clips from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). *See Initiation of Five-Year* (''*Sunset*'') *Review,* 76 FR 89 (January 3, 2011).

As a result of its review, the Department determined that revocation of the antidumping duty order on paper clips from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked. *See Paper Clips From the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order,* 76 FR 26242 (May 6, 2011). On June 29, 2011, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on paper clips from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* USITC Publication 4242 (July 2011), Paper Clips from China: Investigation No. 731–TA–663 (Third Review), and *Paper Clips from China,* 76 FR 42730 (July 19, 2011).

Scope of the Order

The products covered by the order are certain paper clips, wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal (*e.g.,* copper), with a wire diameter between 0.025 inches and 0.075 inches (0.64 to 1.91 millimeters), regardless of physical configuration, except as specifically excluded. The products subject to the order may have a rectangular or ring-like shape and include, but are not limited to, clips commercially referred to as No. 1 clips, No. 3 clips, Jumbo or Giant clips, Gem clips, Frictioned clips, Perfect Gems, Marcel Gems, Universal clips, Nifty clips, Peerless clips, Ring clips, and Glide-On clips. The products subject to the order are currently classifiable under subheading 8305.90.3010 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Specifically excluded from the scope of the order are plastic and vinyl covered paper clips, butterfly clips, binder clips, or other paper fasteners that are not made wholly of wire of base metal and are covered under a separate subheading of the HTSUS.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the antidumping duty order on paper clips would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on paper clips from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation. This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: July 19, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–18884 Filed 7–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Tulane University, et al.; Notice of Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230.

Comments: None received. *Decision:* Approved. *Reasons:* We know of no instruments of equivalent or comparable scientific value to the foreign instruments described below, for the intended purposes, that were being manufactured in the United States at the time of their order.

Docket Number: 11–031. *Applicant:* Tulane University, 6823 St. Charles Avenue, New Orleans, LA 70118. *Instrument:* Vitrobot sample preparation robot. *Manufacturer:* FEI Inc., The Netherlands. *Intended Use:* See application notice at 76 FR 37319, June 27, 2011.

Docket Number: 11–033. *Applicant:* Temple University, 1900 N. 13th Street, Philadelphia, PA 19122. *Instrument:* Super low temperature Scanning Tunneling Microscope. *Manufacturer:* UNISOKU Co., Ltd., Japan. *Intended Use:* See application notice at 76 FR 37319, June 27, 2011.

Docket Number: 11–034. *Applicant:* University of Chicago, Argonne National Laboratory, 9700 South Cass Avenue, Lemont, IL 60439. *Instrument:* Solar spectrum simulation array system. *Manufacturer:* Atlas Material Testing Technology, Germany. *Intended Use:* See application notice at 76 FR 37319, June 27, 2011.

Docket Number: 11–035. *Applicant:* University of California, Los Angeles, 760 Westwood Plaza, Box 77, Los Angeles, CA 90095. *Instrument:* Slicescope microscope. *Manufacturer:* Scientifica Ltd., U.K. *Intended Use:* See application notice at 76 FR 37319, June 27, 2011.

Docket Number: 11–036. *Applicant:* Smith College, 44 College Lane, Northampton, MA 01063. *Instrument:* Quanta 450 Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See application notice at 76 FR 37319, June 27, 2011.

Dated: July 19, 2011.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Office of Policy, Import Administration.

[FR Doc. 2011–18887 Filed 7–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of an Open Meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (RE&EEAC) will meet via conference call to deliberate proposed recommendations by the Trade Policy, Trade Promotion and Domestic Policy Subcommittees to the Secretary of Commerce regarding the development and administration of programs and policies to expand the competitiveness of the U.S. renewable energy and energy efficiency industries, including specific challenges associated with exporting.

DATES: August 19, 2011, from 1 p.m. to 4 p.m. Eastern Daylight Time (E.D.T.)

ADDRESSES: The meeting will take place via conference call.

FOR FURTHER INFORMATION CONTACT: Brian O'Hanlon, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–3492; e-mail: *brian.ohanlon@trade.gov.* This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to OEEI at (202) 482–3492.

SUPPLEMENTARY INFORMATION: *Background:* The Secretary of Commerce established the RE&EEAC pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) on July 14, 2010. The RE&EEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to expand the international competitiveness of the U.S. renewable energy and energy efficiency industries. The RE&EEAC held its first meeting on December 7, 2010 and subsequent meetings on March 1, 2011 and May 31–June 1, 2011.

The meeting is open to the public. Members of the public wishing to participate in the conference call meeting must notify Brian O'Hanlon at the contact information above by 5 p.m. E.D.T. on Monday, August 15, in order to pre-register. Registered members of the public will receive call-in instructions. Please specify any request for reasonable accommodation by August 12, 2011. Last minute requests will be accepted, but may be impossible to fill. A limited amount of time, from 3:30 p.m.–4 p.m., will be available for pertinent brief oral comments from members of the public participating in the meeting.

Any member of the public may submit pertinent written comments concerning the RE&EEAC's affairs at any time before or after the meeting. Comments may be submitted to *brian.ohanlon@trade.gov* or to the Renewable Energy and Energy Efficiency Advisory Committee, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, Room 4830, 1401 Constitution Avenue, NW., Washington, DC 20230. To be considered during the meeting, comments must be received no later

than 5 p.m. E.D.T. on August 15, 2011, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of RE&EEAC meeting minutes will be available within 30 days of the meeting.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2011–18577 Filed 7–25–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Panel of Judges

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the Panel of Judges of the Malcolm Baldrige National Quality Award will meet on Thursday, September 8, 2011. The Panel of Judges is composed of twelve members prominent in the fields of quality, innovation, and performance management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to review applicant consensus scores and select applicants for site visit review. The applications under review by Judges contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene September 8, 2011, at 8 a.m. and adjourn at 5 p.m. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room B, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 7, 2011, that the meeting of the Judges Panel may be closed in accordance with 5 U.S.C. 552b(c)(4) because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential and 5 U.S.C. 552b(c)(9)(B) because for a government agency the meetings are likely to disclose information that could significantly frustrate implementation of a proposed agency action. The meeting, which involves examination of Award applicant data from U.S. companies and other organizations and a discussion of these data as compared to the Award criteria in order to recommend organizations that will receive site visit reviews, may be closed to the public.

Dated: July 21, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–18886 Filed 7–25–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA581

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

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

ACTION: Notice; receipt of EFP application; request for comments.

SUMMARY: NMFS announces the receipt of an exempted fishing permit (EFP) application, and is considering issuance of EFPs for vessels participating in the EFP activities. The EFPs are necessary to allow activities that are otherwise prohibited by Federal regulations. The EFPs will be effective no earlier than August 10, 2011, and would expire one year after date of issuance, but could be terminated earlier under terms and conditions of the EFPs and other applicable laws.

DATES: Comments must be received no later than 5 p.m., local time on August 10, 2011.

ADDRESSES: You may submit comments, identified by 0648–XA581, by any one of the following methods:

- *Fax:* 206–526–6736, Attn: Kevin Duffy.
- *Mail:* Barry A. Thom, Acting Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070, Attn: Kevin Duffy.

FOR FURTHER INFORMATION CONTACT: To request a copy of the EFP application, contact Kevin Duffy (Northwest Region, NMFS), phone: 206–526–4743, fax: 206–526–6736.

SUPPLEMENTARY INFORMATION: This action is authorized by the Magnuson-Stevens Fishery Conservation and Management Act provisions at 50 CFR 600.745, which states that EFPs may be used to authorize fishing activities that would otherwise be prohibited. NMFS received a request for a permit from the Environmental Defense Fund. The primary purpose of the EFP is to conduct gear trials using bottom trawl fishing gear fitted with excluders in order to test reduced bycatch of Pacific halibut while participating in the Shorebased Individual Fishing Quota fishery for groundfish. The EFP would exempt vessels fishing in the Shorebased Individual Fishing Quota fishery and participating in the EFP project from regulations that require the use of a two-seamed bottom trawl net in the area shoreward of the trawl Rockfish Conservation Area. All other regulations applicable to vessels in the Shorebased Individual Fishing Quota fishery would remain in place. The EFP would allow limited testing, during fishing activities, of an excluder device on a four-seamed bottom trawl net in order to compare bycatch rates of Pacific halibut with bycatch rates from legal bottom trawl gears fitted with similar excluder devices.

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

Dated: July 21, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–18883 Filed 7–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA598

New England Fishery Management Council; Public meeting

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

ACTION: Notice; Public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Committee, Plan Development Team and Advisory Panel will hold a meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, August 11, 2011 at 9 a.m.

ADDRESSES: The meeting will be held at the Crowne Plaza Boston North Shore, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7991.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the workshop's agenda are as follows:

The Committee will continue developing Framework Adjustment 47 (FW 47) to the Northeast Multispecies Fishery Management Plan (FMP). At this meeting, the Committee will discuss accountability measures for windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish. The Committee may develop measures that impose gear restrictions on groundfish fishing vessels (both sector and common pool) if annual catch limits for these stocks are exceeded. The Committee will receive a brief overview of the results of recent assessments for Georges Bank yellowtail flounder, Eastern Georges Bank cod, and Eastern Georges Bank haddock. The Committee will identify alternatives for modifying the Georges Bank yellowtail flounder rebuilding strategy in light of the passage of the International Fisheries Agreement Clarification Act. After a review of the accumulation limits workshop held in June 2011, the Committee will develop a scoping document for an amendment to address the issues raised at the meeting. Planning for a sector workshop to be held in October 2011 will also continue. Finally, the Committee will receive a report on progress in developing a method for setting ABCs and ACLs for fishing years 2012–14.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: July 21, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–18870 Filed 7–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Substantive Submissions Made During the Prosecution of the Trademark Application.

Form Number(s): PTO–1553, 1981, 2194, 2195, 2200.

Agency Approval Number: 0651–0054.

Type of Request: Revision of a currently approved collection.

Burden: 48,471 hours annually.

Number of Respondents: 289,521 responses per year.

Avg. Hours per Response: The USPTO expects that it will take the public approximately 5 to 30 minutes (0.08 to 0.50 hours) to gather the necessary information, create the document, and submit the completed request, depending upon the type of request and the method of submission (electronic or paper).

Needs and Uses: This collection of information is required by the Trademark Act, 15 U.S.C. 1051 *et seq.,* which provides for the Federal registration of trademarks, service marks, collective trademarks and servicemarks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the USPTO. Such individuals and businesses may also submit various communications to the USPTO, including requests to amend their registrations to delete goods or services that are no longer being used by the registrant. The rules implementing the Trademark Act are set forth in 37 CFR part 2.

The forms in this collection are available in electronic format through the Trademark Electronic Application System (TEAS). The USPTO is proposing to add six new items into the inventory at this time to take into account a new method of electronic submission of information when a TEAS form having dedicated data fields is not yet available (*i.e.*, TEAS Global forms). These TEAS Global forms can also be submitted in paper format. The USPTO is also proposing to delete the Other Petitions requirement and is introducing specific petitions in its place, namely in the TEAS Global format.

The information in this collection is a matter of public record and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. The information is available at USPTO facilities and can also be accessed at the USPTO Web site.

Affected Public: Businesses or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, *e-mail: Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: InformationCollection@uspto.gov.* Include ''0651–0054 copy request'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 25, 2011 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: July 21, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–18812 Filed 7–25–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Environmental Assessment for Strike Fighter Realignment at Naval Air Station Lemoore, CA

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations [CFR] parts 1500–1508), the Department of the Navy (DoN), gives notice that a draft Environmental Assessment (EA) has been prepared for the proposed realignment of strike fighter assets at Naval Air Station (NAS) Lemoore.

DATES AND ADDRESSES: Written comments on the draft EA must be postmarked no later than August 29, 2011, to ensure consideration in the final EA. Comments should be as specific as possible. Comments should be mailed to: Navy Strike Fighter Realignment EA Project Manager; Naval Facilities Engineering Command, Southwest; Attn: Code EV21.AK; 1220 Pacific Highway, Building 1, 5th Floor; San Diego, CA 92132.

SUPPLEMENTARY INFORMATION: The draft EA evaluates the potential environmental effects of relocating two east coast FA–18 E/F Super Hornet squadrons to NAS Lemoore, and transitioning five NAS Lemoore based FA–18 Hornet squadrons to Super Hornets. The proposed action, when combined with a reduction in the size of NAS Lemoore's existing training squadron, will result in a total decrease of four aircraft at the air station (from 238 to 234) and a reduction in base air operations.

The draft EA is available for public review at the following Web site: *http://www.cnic.navy.mil/cnrsw.* In addition, paper copies of the draft EA are available for review at the following libraries:

1. Kings County Library, Lemoore Branch Library, 457 ''C'' Street, Lemoore, CA 93245.
2. Kings County Library, Hanford Branch Library (Main), 401 North Douty Street, Hanford, CA 93230.
3. Fresno County Public Library, Central Library, 2420 Mariposa Street, Fresno, CA 93721.
4. Riverdale Branch Library, 20975 Malsbary Avenue, Riverdale, CA 93656.
5. West Hills Community College Library, 555 College Avenue, Lemoore, CA 93245.

Spanish language informational materials will be made available on the Web site: *http://www.cnic.navy.mil/cnrsw* and upon written request to: Navy Strike Fighter Realignment EA Project Manager; Naval Facilities Engineering Command, Southwest; Attn: Code EV21.AK; 1220 Pacific Highway Building 1, 5th Floor; San Diego, CA 92132.

Dated: July 20, 2011.

L.M. Senay,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–18819 Filed 7–25–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before August 25, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: July 21, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: An Impact Evaluation of the Teacher Incentive Fund (TIF)

OMB Control Number: 1850–0876.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Institutions or households, Not-for-profit institutions; State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 3,220.

Total Estimated Annual Burden Hours: 1,377.

Abstract: This is the second submission of a two-stage clearance request for approval of data collection activities that will be used to support An Impact Evaluation of the Teacher Incentive Fund (TIF). The evaluation will estimate the impact of the differentiated pay component of the TIF program on student achievement and teacher and principal quality and retention. In addition, the evaluation will provide descriptive information of the program's implementation, grantee challenges, and grantee responses to challenges.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4560. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537.

Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–18854 Filed 7–25–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) Review; Comment Request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Procurement Collection, OMB Control Number 1910–4100. This information collection request covers information necessary to administer and manage DOE's procurement and acquisition programs.

DATES: Comments regarding this collection must be received on or before August 25, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to all of the following: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building Room 10102, 735 17th Street, NW., Washington, DC 20503.

If you wish access to the collection of information, without charge, contact the person listed below as soon as possible. Richard Langston, Procurement Analyst, MA–611/L'Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585–1615, *Richard.Langston@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Langston at the above address, or by telephone at (202) 287–1339.

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1910–4100 (Renewal); (2) *Information Collection Request Title:* Procurement Information Collection; (3) *Purpose:* Under 48 CFR part 952 and Subpart 970.52, DOE must collect certain types of information from those seeking to do business with the Department or those awarded contracts by the Department. This package contains information collections necessary for the solicitation, award, administration, and closeout of procurement contracts. (4) *Annual Estimated Number of Respondents:* 7,529; (5) *Annual Estimated Total Burden Hours:* 896,199; (6) Annual Estimated Reporting and Recordkeeping Cost Burden: $88,658,949.

Statutory Authority: 42 U.S.C. 2201.

Issued in Washington, DC on July 20, 2011.

Patrick Ferraro,

Acting Director, Office of Procurement and Assistance Management, Department of Energy.

[FR Doc. 2011–18850 Filed 7–25–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2011–0177, FRL–9444–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Oil and Hazardous Substance Pollution Contingency Plan (NCP) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 25, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2011–0177, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to: *superfund.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lois Gartner, Assessment and Remediation Division, Office of Superfund Technology and Innovation, (5204P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–603–8711; fax number: 703–603–9102; e-mail address: *gartner.lois@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 4, 2011, (76 FR 25331), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2011–0177, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–1744.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: National Oil and Hazardous Substance Pollution Contingency Plan (NCP) (Renewal).

ICR numbers: EPA ICR No.1463.08, OMB Control No. 2050–0096.

ICR Status: This ICR is scheduled to expire on July 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers the remedial portion of the Superfund Program, as specified in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (CERCLA) and the National Oil and Hazardous Substance Pollution Contingency Plan (NCP). All remedial actions covered by this ICR (*e.g.,* Remedial Investigations/ Feasibility Studies) are stipulated in the statute (CERCLA) and are instrumental in the process of cleaning up National Priorities List (NPL) sites to be protective of human health and the environment. Some community involvement activities covered by this ICR are not required at every site (*e.g.,* Technical Assistance Grants) and depend very much on the community and the nature of the site and cleanup. All community activities seek to involve the public in the cleanup of the sites, gain the input of community members and include the community's perspective on the potential future reuse of the Superfund NPL sites. Community Involvement activities can enhance the remedial process and increase community acceptance and the potential for productive and useful reuse of the sites.

The respondents on whom a burden is placed include state and tribal governments and communities. Potentially Responsible Parties (PRPs) are not addressed in this ICR because the Paperwork Reduction Act does not require the inclusion of those entities that are the subject of administrative or civil action by the Agency. The ICR reports the estimated reporting and recordkeeping burden hours and costs expected to be incurred by these entities and by the Federal government in its oversight capacities of state action and administration of community activities at Fund-lead NPL sites. Remedial activities undertaken by states at NPL sites are those required and recommended by CERCLA and the NCP and the cost of many of these activities may be reimbursed by the Federal government. All community involvement in the remedial process of Superfund is voluntary. Therefore, all cost estimates for community members is theoretical and does not represent expenditure of actual dollars.

States have responsibilities at new and ongoing state-lead sites and at all state-lead, Federal-lead and Federal Facility sites entering the remedial phase of Superfund. All other remedial activities taken by the state are done so at sites which the state voluntarily assumes the lead agency role. Over each year of this ICR, the state will be completing remedial activities at sites that entered the remedial phase of Superfund at different times.

Community members' participation in remedial activities at Superfund sites is purely voluntary, and the level of involvement varies greatly depending on the complexity of the site, its location (urban vs. rural, industrial vs. residential, etc.) and the level of interest.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State/ tribal governments and individual community members who voluntarily participate in the remedial phase of the Superfund program and in associated community involvement activities throughout the Superfund process.

Estimated Number of Respondents: 11,397.

Frequency of Response: Once, On Occasion.

Estimated Total Annual Hour Burden: 179,615 .

Estimated Total Annual Cost: $813,440, which is entirely for the cost of labor. All other associated costs to respondents are reimbursed by the Federal government.

Changes in the Estimates: There is an increase of 108,450 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is primarily due to an adjustment in estimates attributable to the increase in the number of sites estimated to have RI/FS starts and ongoing RI/FS activity as well as an the increase in the number of sites expected to have Proposed Plans developed, and the introduction of customer satisfaction surveys at certain sites.

Dated: July 21, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–18878 Filed 7–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0082, FRL–9443–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; EPA's Natural Gas STAR Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 25, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0082, to (1) Environmental Protection Agency (EPA) online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jerome Blackman, Office of Atmospheric Programs, Climate Change Division, (6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–343–9630; *fax number:* 202–343–2202; *e-mail address: blackman.jerome@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 4, 2011 (76 FR 6460), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0082, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: EPA's Natural Gas STAR Program.

ICR Numbers: EPA ICR No. 1736.06, OMB Control No. 2060–0328.

ICR Status: This ICR is scheduled to expire on 7/31/2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Natural Gas STAR is an EPA-sponsored, voluntary program that encourages oil and natural gas companies to adopt cost-effective technologies and practices for reducing methane emissions. By joining, Natural Gas STAR partners agree to implement cost-effective technologies and practices to reduce methane emissions, which will save money, improve operational efficiency, increase natural gas supply, and improve environmental quality. EPA needs to collect information to monitor Program participation and to obtain general information on new Natural Gas STAR partners. EPA also uses the information collected to evaluate a partner's progress and performance, assess overall Program accomplishments, and develop additional technical guidance documents to benefit the industry. Information collection is accomplished through the use of an annual reporting process that allows partner companies to report their accomplishments in either a traditional hard-copy format or electronically. Natural Gas STAR partners may designate information submitted under this ICR as CBI. EPA will treat all such information as CBI and will not make the company or agency-specific information collected under this ICR available to the general public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 35 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: The gathering and processing, production, transmission, and distribution sectors of the natural gas industry.

Estimated Number of Respondents: 149.

Frequency of Response: 149.

Estimated Total Annual Hour Burden: 5,201.

Estimated Total Annual Cost: $477,657, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 409 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is attributed to the Program's maturity and decrease in number of new Program partners.

Dated: July 20, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–18841 Filed 7–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2004–0006; FRL–9443–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the

nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 25, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2004–0006, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management, 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–2625; e-mail address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 14, 2011 (76 FR 8363), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2004–0006, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Community Right-to-Know Reporting Requirements under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (Renewal).

ICR number: EPA ICR No. 1352.12, OMB Control No. 2050–0072.

ICR Status: This ICR is scheduled to expire on July 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA Section 311 requires owners and operators of facilities subject to OSHA Hazard Communication Standard to submit a list of chemicals or Material Safety Data Sheet (MSDS) (for those chemicals that exceed thresholds, specified in 40 CFR part 370) to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a new facility becomes subject to the regulations or updating the information by facilities that are already covered by the regulations. EPCRA Section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form (for those chemicals that exceed the thresholds, specified in 40 CFR Part 370) to the SERC, LEPC, and LFD with jurisdiction over their facility. This form is to be submitted on March 1 of each year, on the inventory of chemicals in the previous calendar year.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilities required to prepare or have available a material safety data sheet for any hazardous chemical under the OSHA Hazard Communication Standard.

Estimated Number of Respondents: 390,000 private facilities and 3,552 state and local agencies.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 3,909,132.

Estimated Total Annual Cost: $247,574,394, includes $6,389,900 annualized capital and operation & maintenance (O&M) cost.

Changes in the Estimates: There is an increase of 116,700 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the increase in the number of respondents.

Dated: July 20, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–18835 Filed 7–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2005–0530; FRL–9443–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Application for Reference and Equivalent Method Determination (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 25, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–ORD–2005–0530 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *ord.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, ORD Docket, Environmental Protection Agency, Mail code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert W. Vanderpool, Human Exposure and Atmospheric Sciences Division, Process Modeling Research Branch, Mail Drop D205–03, Environmental Protection Agency, 109 TW Alexander Drive, Research Triangle Park, NC 27711; *telephone number:* 919–541–7877; *fax number:* 919–541–1153; *e-mail address: vanderpool.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 8, 2011 (76 FR 19769), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–ORD–2005–0530, which is available for online viewing at *http://www.regulations.gov* or in person viewing at the ORD Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the ORD Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Application for Reference and Equivalent Method Determination (Renewal).

ICR numbers: EPA ICR No. 0559.11, OMB Control No. 2080–0005.

ICR Status: This ICR is scheduled to expire on July 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: To determine compliance with the National Ambient Air Quality Standards (NAAQS), State air monitoring agencies are required to use, in their air quality monitoring networks, air monitoring methods that have been formally designated by the EPA as either reference or equivalent methods under EPA regulations at 40 CFR part 53. A manufacturer or seller of an air monitoring method (*e.g.,* an air monitoring sampler or analyzer) that seeks to obtain such EPA designation of one of its products must carry out prescribed tests of the method. The test results and other information must then be submitted to the EPA in the form of an application for a reference or equivalent method determination in accordance with 40 CFR part 53. The EPA uses this information, under the provisions of part 53, to determine whether the particular method should be designated as either a reference or equivalent method. After a method is designated, the applicant must also maintain records of the names and mailing addresses of all ultimate purchasers of all analyzers or samplers sold as designated methods under the method designation. If the method designated is a method for fine particulate matter ($PM_{2.5}$) and coarse particulate matter ($PM_{10-2.5}$), the applicant must also submit a checklist signed by an ISO-certified auditor to indicate that the samplers or analyzers sold as part of the designated method are manufactured in an ISO 9001-registered facility. Also, an applicant must submit a minor application to seek approval for any proposed modifications to previously designated methods.

A response to this collection of information is voluntary, but it is required to obtain the benefit of EPA designation under 40 CFR part 53. Submission of some information that is claimed by the applicant to be confidential business information may be necessary to make a reference or equivalent method determination. The confidentiality of any submitted information identified as confidential business information by the applicant will be protected in full accordance with 40 CFR Part 53.15 and all applicable provisions of 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 341 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers or sellers of an air monitoring method.

Estimated Number of Respondents: 22.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 7,492.

Estimated Total Annual Cost: $650,494, includes $132,668 annualized capital and O&M costs.

Changes in the Estimates: There is no change in hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is based on a comprehensive review of ongoing and expected NAAQS reviews encompassing this ICR's period of performance.

Dated: July 20, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–18836 Filed 7–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA HQ–SFUND–2011–0052; FRL–9443–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Superfund Site Evaluation and Hazard Ranking System (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 25, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2011–0052, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *superfund.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Randy Hippen, mail code 5204–P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (703) 603–8829; *fax number:* (703) 603–9104; *e-mail address: hippen.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 8, 2011 (76 *FR* 6782), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2011–0052, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Superfund Site Evaluation and Hazard Ranking System (Renewal).

ICR Numbers: EPA ICR No. 1488.08, OMB Control No. 2050–0095.

ICR Status: This ICR is scheduled to expire on July 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 1980 and 1986) amended the National Oil and Hazardous Substances Contingency Plan (NCP) to include criteria prioritizing releases throughout the U.S. before undertaking remedial action at uncontrolled hazardous waste sites. The Hazard Ranking System (HRS) is a model that is used to evaluate the relative threats to human health and the environment posed by actual or potential releases of hazardous substances, pollutants, and contaminants. The HRS criteria take into account the population at risk, the hazard potential of the substances, as well as the potential for contamination of drinking water supplies, direct human contact, destruction of sensitive ecosystems, damage to natural resources affecting the human food chain, contamination of surface water used for recreation or potable water consumption, and contamination of ambient air.

EPA Regional offices work with States to determine those sites for which the State will conduct the Superfund site evaluation activities and the HRS scoring. The States are reimbursed 100 percent of their costs, except for record maintenance.

Under this ICR, the States will apply the HRS by identifying and classifying those releases or sites that warrant further investigation. The HRS score is crucial since it is the primary mechanism used to determine whether a site is eligible to be included on the National Priorities List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions.

HRS scores are derived from the sources described in this information collection, including conducting field reconnaissance, taking samples at the site, and reviewing available reports and documents. States record the collected information on HRS documentation worksheets and include this in the supporting reference package.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 214 hours per

response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States (including U.S. Territories) and Indian Tribes.

Estimated Number of Respondents: 60.

Frequency of Response: 9 to 10 reports per year.

Estimated Total Annual Hour Burden: 121,681.

Estimated Total Annual Cost: $11,238,970, includes $1,869,270 annualized capital or O&M costs, however all these costs are reimbursed by the Federal Government through cooperative agreements, resulting in no net cost to respondents for this ICR.

Changes in the Estimates: There is a decrease of 27,192 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is primarily due to a reduction in the number of total activities to be performed by respondents combined with a decline in related infrastructure costs. This change reflects an adjustment to the estimated burden.

Dated: July 20, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–18866 Filed 7–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2011–0532; FRL–9443–9]

Notice of Availability of the External Review Draft of the Microbial Risk Assessment Guideline: Pathogenic Microorganisms With Focus on Food and in Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 60-day public comment period for the External Review Draft of ''*Microbial Risk Assessment Guideline: Pathogenic Microorganisms with Focus on Food and in Water.''* EPA developed the Guideline in collaboration with the U.S. Department of Agriculture, Food Safety Inspection Service (USDA/FSIS) and with scientists from other Federal agencies. This draft document is being released solely for the purpose of seeking public comment prior to peer review. The document will undergo independent peer review during an expert peer review meeting, which will be convened, organized, and conducted by an EPA contractor in 2011. The date of the external peer review meeting will be announced in a subsequent **Federal Register** notice. All comments received by the docket closing date September 26, 2011 will be shared with the external peer review panel for their consideration. Comments received after the close of the comment period may be considered by the two agencies when they finalize the document. This document has not been formally disseminated by EPA or USDA/FSIS. This draft guidance does not represent and should not be construed to represent EPA or USDA/FSIS policy, viewpoint, or determination. Members of the public may obtain the draft guidance from *http://www.regulations.gov;* or *http://www.epa.gov/raf/microbial/index.htm* or from Dr. Michael Broder via the contact information below.

DATES: All comments received by the docket closing date September 26, 2011 will be shared with the external peer review panel for their consideration. Comments received beyond that time may be considered by EPA and USDA/FSIS when it finalizes the document.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2011–0532, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* ORD.Docket@epa.gov.
- *Mail:* ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID EPA–HQ–ORD–2011–0532. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID EPA–HQ–ORD–2011–0532. 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 by statute through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the ORD Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Dr. Michael W. Broder, Office of the Science Advisor, Mail Code 8105–R, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–3393; fax number: (202) 564–2070, E-mail: *broder.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Both EPA and USDA/FSIS have an established history of conducting human health risk assessments on chemical agents but less experience on microbial agents. EPA conducts microbial risk assessment on agents under a number of different statutes for a variety of purposes. These include both naturally occurring and genetically modified microorganisms with the potential for environmental exposure. USDA/FSIS is charged with ensuring the safety of food from the farm to the consumer.

Microbial risk assessment entails addressing issues that are not considered in chemical risk assessment (*e.g.,* die off and regrowth of bacteria, effects of prior exposure and immune status). EPA, USDA/FSIS and other Federal agencies often conduct risk assessments on similar pathogens albeit in different media and under different scenarios. A common approach to conducting these assessments will foster better interaction among participating agencies leading to a more efficient and consistent process. In order to better harmonize the way that EPA conducts its assessments across programs, EPA initiated and was joined by USDA/FSIS and scientists from other Federal agencies to develop guidelines to promote greater consistency within the government and provide more transparency to stakeholders and other interested parties. This cross-agency activity has generated the draft Guideline.

This document addresses the full range of microbial risk assessment topics: Definition of the roles and responsibilities, planning and scoping, the four components of a risk assessment, and sections discussing risk management and communication. The Guideline identifies differences in issues and processes between chemical and microbial risk assessment such as secondary transmission (person to person), increases and decreases in microbial populations both in the environment and host individuals, and the role of prior exposure on disease manifestation.

Collectively this document reflects the combined experience and expertise of risk assessors and will promote a consistent approach to conducting microbial risk assessments.

Dated: July 15, 2011

Paul T. Anastas,

EPA Science Advisor.

[FR Doc. 2011–18879 Filed 7–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–8878–7]

Product Cancellation Order for Certain Pesticide Registrations

Correction

In notice document number 2011–17089, appearing on pages 40359–40365, in the issue of Friday, July 8, 2011, make the following corrections:

1. On page 40363, Table 3—Cancellations of Products Due to Non-Payment of Maintenance Fees—Continued, column number one, ''EPA Registration No.,'' last row, ''WA080009'' should read ''WAO70009.''

2. On page 40364, Table 3—Cancellations of Products Due to Non-Payment of Maintenance Fees—Continued, in the first column, ''EPA Registration No.,'' and third row, ''WA080011'' should read ''WA070011.''

[FR Doc. C1–2011–17089 Filed 7–25–11; 8:45 am]

BILLING CODE 1505–50–D

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 7439, Columbia Savings and Loan Association, Beverly Hills, CA

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Columbia Savings and Loan Association, Beverly Hills, California (Receiver'') intends to terminate its receiverships for said institutions. The Resolution Trust Corporation (''RTC'') was appointed Receiver for Columbia Savings and Loan Association and Columbia Savings and Loan Association F.A. and pursuant to 12 U.S.C. 1441a(m)(1) FDIC succeeded RTC as Receiver. The Columbia Savings and Loan Association F.A. was terminated on December 2, 1998. The liquidation of receivership assets for Columbia Savings and Loan Association has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based on the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty (30) days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty (30) days of the date of this Notice to:

Federal Deposit Insurance Corporation, Attention: Receivership Oversight Department, 1601 Bryan Street, Dallas, Texas 75201.

No comments concerning the termination of these receiverships will be considered which are not sent within this time frame.

Federal Deposit Insurance Corporation.

July 21, 2011.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–18838 Filed 7–25–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: July 18, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10376	First Peoples Bank	Port St. Lucie	FL	7/15/2011
10377	High Trust Bank	Stockbridge	GA	7/15/2011
10378	One Georgia Bank	Atlanta	GA	7/15/2011
10379	Summit Bank	Prescott	AZ	7/15/2011

[FR Doc. 2011–18869 Filed 7–25–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 11–11]

Marine Repair Services of Maryland, Inc. v. Ports America Chesapeake, LLC; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by Marine Repair Services of Maryland, Inc., hereinafter ''Complainant,'' against Ports America Chesapeake, LLC, hereinafter ''Respondent''. Complainant asserts that it is a corporation organized under the laws of the state of Maryland. Complainant alleges that Respondent is a marine terminal operator and a limited liability company organized under the laws of the state of Delaware, and authorized to do business in Maryland.

Complainant alleges that Respondent violated the Shipping Act of 1984 by unreasonably prejudicing and disadvantaging Complainant in its business operations at the Port of Baltimore, and unreasonably refusing to deal with Complainant, 46 U.S.C. 41106(2) and 41106(3). Complainant requests ''that Respondent Ports America Chesapeake LLC be required to answer the charges herein; that after due hearing, an order be made commanding Respondent Ports America Chesapeake LLC: (1) To cease and desist from the aforesaid violations of the Shippers (sic) Act of 1984 (as amended and codified); (2) to establish and put in force such practices as the Commission determines to be lawful and reasonable; (3) to pay to Complainant Marine Repair Services of Maryland, Inc., by way of reparations for the unlawful conduct described above in the amount of no less than $900,000.00, with interest and attorney's fees or such sum as the Commission may determine to be proper as an award of reparation; and (4) that such other and further order or orders be made as the Commission determines to be proper in the premises.'' The full text of the complaint can be found in the Commission's Electronic Reading Room at *http://www.fmc.gov.*

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by July 19, 2012 and the final decision of the Commission shall be issued by November 16, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–18762 Filed 7–25–11; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Using Public Data for Cancer Prevention and Control: From Innovation to Impact Challenge''

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice.

Authority: 15 U.S.C. 3719.

SUMMARY: ''Using Public Data for Cancer Prevention and Control: From Innovation to Impact Challenge'' is a challenge aimed at encouraging multidisciplinary teams of software developers, entrepreneurs, and health scientists to use health-related data made available by the National Cancer Institute (NCI) and other Federal agencies to create innovative consumer health applications that will provide actionable steps for consumers along the cancer control and prevention continuum. This challenge will provide useful tools for public health promotion and protection, a key goal of the U.S. Department of Health and Human Services.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

DATES: Effective on July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Adam Wong, 202–720–2866. Wil Yu, 202–690–5920.

SUPPLEMENTARY INFORMATION: *Subject of Challenge Competition:* Entrants in ''Using Public Data for Cancer Prevention and Control: From Innovation to Impact Challenge'' are asked to develop software applications (apps) that utilize the wide array of health-related data made available by the NCI Division of Cancer Control and Population Sciences (DCCPS) and other Federal agencies for innovative consumer health apps. These apps should potentially integrate with existing technology platforms and address targets comprising DCCPS priority areas on the continuum of cancer prevention and control. More information about these priority areas can be found at: *http://cancercontrol.cancer.gov/od/index.html.* Entrants are required to address challenges faced by consumers, clinicians, or researchers such as behavior risk reduction for prevention, survivorship (*e.g.,* nutrition, physical activity, smoking cessation), early detection and screening, informed decision-making, and adherence to treatment regimens.

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity:

(1) Shall have registered to participate in the competition under the rules promulgated by Office of the National

Coordinator for Health Information Technology;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Registered participants shall be required to agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

Participants shall be required to obtain liability insurance or demonstrate financial responsibility, in amounts determined by the head of the Office of the National Coordinator for Health Information Technology, for claims by—

(1) A third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under the registered participant's insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and

(2) the Federal Government for damage or loss to Government property resulting from such an activity.

Participants must be teams of at least two people.

All participants are required to provide written consent to the rules upon or before submitting an entry.

DATES:

Phase I

- Submission Period Begins: 12:01am, EDT, July 15th, 2011.
- Submission Period for Initial Entries Ends: 11:59 pm, EDT, August 26th, 2011.

Phase II:

- Final Submission Period Begins: 12:01am, E.D.T., October 3rd, 2011.
- Final Submission Period Ends: 11:59pm, E.S.T., November 18th, 2011.

Registration Process for Participants

To register for this challenge participants should:

- Access the *http://www.challenge.gov* Web site and search for the ''Using Public Data for Cancer Prevention and Control: From Innovation to Impact Challenge''.
- Access the ONC Investing in Innovation (i2) Challenge Web site at:
  - *http://www.health2challenge.org/category/onc/.*
  - A registration link for the challenge can be found on the landing page under the challenge description.

Amount of the Prize

Phase I

- Four semi-finalists will receive prizes of $10,000 each.

Phase II

- Two finalist teams will receive awards of $20,000 each.

Awards may be subject to Federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Basis Upon Which Winner Will Be Selected

The judging panel will make selections based upon the following criteria:

1. Impact on cancer prevention and control.
2. Use of cancer-related data.
3. Integration with existing health records.
4. Innovation.
5. Usability.

Additional Information

Ownership of intellectual property is determined by the following:

- Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement.
- By participating in the challenge, each entrant hereby irrevocably grants to Sponsor and Administrator a limited, non-exclusive, royalty free, worldwide, license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the challenge.

Dated: July 18, 2011.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2011–18728 Filed 7–25–11; 8:45 am]

BILLING CODE 4150–45–

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[[60Day–11–0572]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to, Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Written comments should be received within 60 days of this notice.

Proposed Project

Health Message Testing System, (0920–0572, exp. 11/30/2011)—Revision—Office of the Associate Director for Communication, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Before CDC disseminates a health message to the public, the message always undergoes scientific review. However, even though the message is based on sound scientific content, there is no guarantee that the public will understand a health message or that the message will move people to take recommended action. Communication theorists and researchers agree that for health messages to be as clear and influential as possible, target audience members or representatives must be involved in developing the messages and provisional versions of the messages must be tested with members of the target audience.

However, increasingly there are circumstances when CDC must move swiftly to protect life, prevent disease, or calm public anxiety. Health message testing is even more important in these instances, because of the critical nature of the information need.

CDC receives a mandate from Congress with a tight deadline for communicating with the public about a specific topic. For example, Congress gave CDC 120 days to develop and test messages for a public information campaign about *Helicobacter pylori,* a bacterium that can cause stomach ulcers and increase cancer risk if an infected individual is not treated with antibiotics.

In the interest of timely health message dissemination, many programs forgo the important step of testing messages on dimensions such as clarity, salience, appeal, and persuasiveness (i.e., the ability to influence behavioral intention). Skipping this step avoids the delay involved in the standard OMB review process, but at a high potential cost. Untested messages can waste communication resources and opportunities because the messages can be perceived as unclear or irrelevant. Untested messages can also have unintended consequences, such as jeopardizing the credibility of Federal health officials.

The Health Message Testing System (HMTS), a generic information collection, will enable programs across CDC to collect the information they require in a timely manner to:

- Ensure quality and prevent waste in the dissemination of health information by CDC to the public.
- Refine message concepts and to test draft materials for clarity, salience, appeal, and persuasiveness to target audiences.
- Guide the action of health communication officials who are responding to health emergencies, Congressionally-mandated campaigns with short timeframes, media-generated public concern, time-limited communication opportunities, trends, and the need to refresh materials or dissemination strategies in an ongoing campaign.

Each testing instrument will be based on specific health issues or topics. Although it is not possible to develop one instrument for use in all instances, the same kinds of questions are asked in most message testing. This package includes generic questions and formats that can be used to develop health message testing data collection instruments. These include a list of screening questions, comprised of demographic and introductory questions, along with other questions that can be used to create a mix of relevant questions for each proposed message testing data collection method. However, programs may request to use additional questions if needed.

Message testing questions will focus on issues such as comprehension, impressions, personal relevance, content and wording, efficacy of response, channels, and spokesperson/sponsor. Such information will enable message developers to enhance the effectiveness of messages for intended audiences.

Data collection methods proposed for HMTS include intercept interviews, telephone interviews, focus groups, online surveys, and cognitive interviews. In almost all instances, data will be collected by outside organizations under contract with CDC.

There is no cost to the respondents other than their time.

TABLE A12A—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection methods	Number of respondents per method	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Central Location Intercept Interviews, Telephone Interviews, Individual In-depth Interview (Cognitive Interviews), Focus Group Screenings, Focus Groups, Online Surveys	18,525	1	8/60	2,470
Total	18,525			2,470

Dated: July 19, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–18807 Filed 7–25–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–11FK]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Exploring the OSH Needs of Small Construction Business—New—*National Institute for Occupational Safety and Health (NIOSH)*, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. In this capacity, NIOSH will conduct in-depth interviews designed to assess perceptions and opinions among the target audience, small construction business owners, and to provide content for the development of a survey to assess the occupational safety and health needs and motivators for seeking occupational safety and health (OSH) information among small construction business owners.

Exploring the OSH Needs of Small Construction Business is a four year field study for which the overall goal is to identify the occupational safety and health (OSH) needs of small construction businesses (SCBs), and to inform methods that will successfully motivate SCB owners to seek OSH training relevant to their unique work situations. The data gathered in this study regarding SCB owners' specific business training needs, motivational factors, and preferred information sources will be of significant practical value when designing and implementing future interventions.

As part of this project, a survey will be developed to assess SCB owners businesses' specific training needs, motivational factors, and preferred information sources. The proposed in-depth interviews described here are a critical step toward the development of this survey. Phase 1 of this project included interview development and revision. The goal of Phase 2 of this project is to gather key-informant perceptions and opinions among the target audience, small construction business owners in the greater Cincinnati area with 10 or fewer employees. Data gathered from in-depth interviews will provide response content for the development of a survey to assess the occupational safety and health needs and motivators for seeking OSH information among small construction business owners. That is, the results of these interviews will be analyzed to identify common sets of responses, and these responses will be used in the development of the survey mentioned above.

Construction had the most fatal injuries of any sector, with 1,178 fatalities in 2006 (21% of total) (U.S. Dept. of Labor, 2008). More than 79% of construction businesses employ fewer than 10 employees (CPWR, 2007), and this establishment size experiences the highest fatality rate within construction (U.S. Dept. of Labor, 2008). The need for reaching this population with effective, affordable, and culturally appropriate training has been documented in publications and is increasingly becoming an institutional priority at NIOSH. Given the numerous obstacles which small construction business owners face in effectively managing occupational safety and health (e.g., financial and time constraints), there is a need for identifying the most crucial components of occupational safety and health training. Additionally, previous investigations suggest a need for persuading small construction business owners to seek out occupational safety and health training.

This interview will be administered to a sample of *approximately 30 owners of construction businesses with 10 or fewer employees from the Greater Cincinnati area*. The sample size is based on recommendations related to qualitative interview methods and the research team's prior experience.

Participants for this data collection will be recruited with the assistance of contractors who have successfully performed similar tasks for NIOSH in the past. The interview questionnaire will be administered verbally to participants in English.

Once this study is complete, results will be made available via various means including print publications and the agency internet site. The information gathered by this project could be used by OSHA to determine guidelines for the development of appropriate training materials for small construction businesses. The results of this project will benefit construction workers by developing recommendations for increasing the effectiveness of occupational safety and health outreach methods specifically targeted to small construction businesses. Although beyond the scope of this study, it is expected that improved use of OSH programs will lower rates of injuries and fatalities for workers.

There is no cost to respondents other than their time. The total estimated annual burden hours are 45.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average Burden per response (in hours)
SCBs	30	1	1.5

Dated: July 19, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–18809 Filed 7–25–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Indiana State Plan Amendments (SPA) 11–011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on September 13, 2011, at the CMS Chicago Regional Office, 233 N. Michigan Avenue, Suite 600, Chicago, IL 60601, to reconsider CMS' decision to disapprove Indiana SPA 11–011.

DATES: *Closing Date:* Requests to participate in the hearing as a party must be received by the presiding officer by August 10, 2011.

FOR FURTHER INFORMATION CONTACT: Benjamin Cohen, Presiding Officer CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, Telephone: (410) 786–3169.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove Indiana SPA 11–011, which

was submitted on May 15, 2011, and disapproved on June 1, 2011. The SPA proposed to prohibit the State Medicaid agency from entering into a contract or grant with providers that perform abortions or maintain or operate facilities where abortions are performed, except for hospitals or ambulatory surgical centers.

CMS based the disapproval on a determination that SPA 11–011 would not comply with the requirements of section 1902(a)(23) of the Social Security Act (the Act). Whether SPA 11–011 complies with section 1902(a)(23) of the Act is the only issue in this reconsideration. Section 1902(a)(23) of the Act provides that beneficiaries may obtain covered services from any qualified provider that undertakes to provide such services. Contrary to that requirement, this SPA would eliminate the ability of Medicaid beneficiaries to receive services from specific providers for reasons unrelated to their qualifications to provide such services. It is not consistent with section 1902(a)(23) for Medicaid programs to exclude qualified health care providers from providing services that are funded under the program because of a provider's scope of practice. Such a restriction would have a particular effect on beneficiaries' ability to access family planning providers. It is important to note that access to family planning providers is an important statutory priority, as evidenced by the additional protections for beneficiary choice of family planning providers under section 1902(a)(23)(B) of the Act for managed care enrollees. It is also important to note that neither SPA 11–011 nor the disapproval affect the applicable restrictions on Federal funding of abortion services.

Section 1116 of the Act and Federal regulations at 42 CFR part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Indiana announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Patricia Casanova,
Director, MS 07, 402 W. Washington Street, Room W382, Indianapolis, IND 46204–2739.

Dear Ms.Casanova:

I am responding to your request for reconsideration of the decision to disapprove the Indiana State Plan Amendment (SPA) 11–011 which was submitted on May 15, 2011, and disapproved on June 1, 2011. The SPA proposed to prohibit the State Medicaid agency from entering into a contract or grant with providers that perform abortions or maintain or operate facilities where abortions are performed, except for hospitals or ambulatory surgical centers.

Whether SPA 11–011 complies with section 1902(a)(23) of the Act is the only issue in this reconsideration.

Section 1902(a)(23) of the Act provides that beneficiaries may obtain covered services from any qualified provider that undertakes to provide such services. Contrary to that requirement, this SPA would eliminate the ability of Medicaid beneficiaries to receive services from specific providers for reasons unrelated to their qualifications to provide such services. It is not consistent with section 1902(a)(23) for Medicaid programs to exclude qualified health care providers from providing services that are funded under the program because of a provider's scope of practice. Such a restriction would have a particular effect on beneficiaries' ability to access family planning providers. It is important to note that access to family planning providers is an important statutory priority, as evidenced by the additional protections for beneficiary choice of family planning providers under section 1902(a)(23)(B) of the Act for managed care enrollees. It is also important to note that neither SPA 11–011 nor the disapproval affect the applicable restrictions on Federal funding of abortion services.

I am scheduling a hearing on your request for reconsideration to be held on September 13, 2011, at the CMS Chicago Regional Office, 233 N. Michigan Avenue, Suite 600, Chicago, IL 60601, in order to reconsider the decision to disapprove SPA 11–011.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430.

I am designating Mr. Benjamin Cohen as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–3169. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. As you requested, I will also provide this response to Indiana Solicitor General Thomas M. Fisher.

Sincerely,
Donald M. Berwick, M.D.

Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18).

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: July 20, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–18831 Filed 7–25–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0010]

Cooperative Agreement With the World Health Organization Department of Food Safety and Zoonoses in Support of Strategies That Address Food Safety Problems That Align Domestically and Globally (U01); Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 28, 2011 (76 FR 37817). The document announced the availability of funds for the support of a sole source cooperative agreement with the World Health Organization. The document published stating that the total funding available was up to $260,000 (total costs including indirect costs) in fiscal year 2011 in support of this project. This document corrects that error.

FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT:

For Programmatic Questions and Concerns Contact

Katherine Bond, Office of International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–8318, e-mail: *Katherine.bond@fda.hhs.gov.*

For Financial and Administrative Questions and Concerns Contact

Gladys Melendez, Office of Acquisition and Grant Services (HFA–

500), Food and Drug Administration, 5630 Fishers Lane, rm. 1078, Rockville, MD 20857, 301–827–7175, e-mail: *gladys.Melendez-bohler@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–16120, appearing on page 37817, in the **Federal Register** of Tuesday, June 28, 2011, the following correction is made:

1. On page 37819, in third column, section *A. Award Amount* is corrected to read as follows:

The total funding available is up to $360,000 (total costs including indirect costs) in fiscal year 2011 in support of this project. One award will be made. Funding will be provided for one year, with the possibility of up to four additional years of support, contingent upon successful performance and available funding.

Dated: July 21, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–18881 Filed 7–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0239]

Identifying the Center for Drug Evaluation and Research's Science and Research Needs; Availability of a Draft Report; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft report entitled ''Identifying CDER's Science and Research Needs.'' This document identifies current priorities in regulatory science related to the mission of the Center for Drug Evaluation and Research (CDER), and will guide strategic planning of internal research efforts. Through external communication of the science and research needs outlined in the report, CDER hopes to stimulate research and foster collaborations with external partners and stakeholders to address these priorities.

DATES: Although you can comment on the report at any time, to ensure that the Agency considers your comment on this report before it begins work on the final version of the report, submit either electronic or written comments on the report by September 26, 2011.

ADDRESSES: Submit written requests for single copies of this report to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft report.

Submit electronic comments on the draft report 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: Ruth Barratt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, rm. 4540, Silver Spring, MD 20993–0002, 301–796–2600.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft report entitled ''Identifying CDER's Science and Research Needs.'' This report is the result of an effort to identify regulatory science needs that, if addressed, would enhance CDER's ability to fulfill its regulatory mission. A publication entitled ''FDA Critical Path Opportunities Report and Critical Path Opportunities List'' was published in March 2006. That report focused on the scientific challenges underlying medical product development and served as a catalyst for CDER to launch an effort to identify specific areas that would benefit from additional regulatory science efforts. More recently, FDA released, ''Advancing Regulatory Science for Public Health'', which incorporates the Critical Path objectives into a broad framework for advancing regulatory science. In support of these initiatives, this report delineates major areas of scientific need that can contribute to the development of a strategic science and research agenda.

To begin an assessment of these needs, more than 200 representatives from CDER's offices were asked to identify: (1) Scientific challenges currently addressed on a case-by-case basis that might benefit from the development of a systematized approach; (2) recurrent science issues across teams, divisions, or offices; and (3) emerging scientific challenges. A comprehensive set of science and research needs was compiled from these discussions. Senior management from CDER offices reviewed and prioritized topics from their offices. These science and research needs were ultimately grouped into seven categories that were reviewed and endorsed by the CDER Science Prioritization and Review Committee and CDER senior management.

Seven major categories that crossed multiple disciplines were identified: (1) Improve access to postmarket data sources and explore feasibility of their use in different types of analyses; (2) improve risk assessment and management strategies to reinforce the safe use of drugs; (3) evaluate the effectiveness and impact of different types of regulatory communications to the public and other stakeholders; (4) evaluate the links among product quality attributes, manufacturing processes, and product performance; (5) develop and improve predictive models of safety and efficacy in humans; (6) improve clinical trial design, analysis, and conduct; and (7) enhance individualization of patient treatment.

The draft report is not intended to address the need to maintain a robust scientific readiness to respond rapidly to regulatory crises, but by communicating CDER's current science and research needs, CDER hopes to stimulate research and foster collaborations with external partners and stakeholders. CDER is disseminating this document externally and soliciting input on: (1) Research and initiatives that may be ongoing; and (2) opportunities to collaborate with external partners and stakeholders to maximize resources to address the areas for development discussed previously. The input will be reviewed and incorporated as appropriate into plans for collaborations and potential external partners will be contacted for further discussion.

II. 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov.*

Dated: July 21, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–18880 Filed 7–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0465]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Repetitive Transcranial Magnetic Stimulation Systems; 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: Repetitive Transcranial Magnetic Stimulation Systems.'' This guidance document describes a means by which a repetitive transcranial magnetic stimulation (rTMS) system may comply with the requirement of special controls for class II devices. This guidance document is being immediately implemented as the special control for rTMS systems, but it remains subject to comment in accordance with the Agency's good guidance practices.

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: Repetitive Transcranial Magnetic Stimulation Systems'' 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: Ann H. Costello, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2460, Silver Spring, MD 20993–0002, 301–796–6493.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document will serve as the special control for rTMS systems. Section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(2)) provides that any person who submits a premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the FD&C Act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the FD&C Act. FDA will, within 60 days of receiving such a request, classify the device by written order. This classification will be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing this classification. Because of the timeframes established by section 513(f)(2) of the FD&C Act, FDA has determined, under 21 CFR 10.115(g)(2), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Thus, FDA is issuing this guidance document as a level 1 guidance document that is for immediate implementation. FDA will consider any comments that are received in response to this notice to determine whether to revise the guidance document. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying rTMS systems into class II (special controls), under section 513(f)(2) of the FD&C Act.

II. Significance of Special Controls Guidance

FDA believes that adherence to the recommendations described in this guidance, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of rTMS systems classified under 882.5805 (21 CFR 882.5805). In order to be classified as a class II device under 882.5805, a rTMS system 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: Repetitive Transcranial Magnetic Stimulation (rTMS) Systems'' 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 1728 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

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 56.115 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 20, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–18805 Filed 7–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 14, 2011, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm*; under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Caleb Briggs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, e-mail: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On September 14, 2011, during the morning session, the committee will discuss new drug application 021825, with the proposed trade name Ferriprox (deferiprone) film-coated tablets, application submitted by ApoPharma, Inc., represented by Cato Research Ltd. (authorized U.S. agent). The proposed indication (use) for this product is for the treatment of patients with transfusional iron overload (excess iron in the body related to blood transfusions), when current chelation therapy is inadequate. (Chelation therapy in these patients binds iron in a form that allows it to be eliminated from the body).

During the afternoon session, the committee will consider the development of products for the treatment of patients with nonmetastatic castration resistant prostate cancer (CRPC) who have a rising serum level of prostate-specific antigen (PSA) despite being on androgen deprivation therapy (ADT). There are no products currently approved for this indication. No specific products will be presented or discussed; rather, the committee will be asked to consider possible trial designs and suitable clinical endpoints to establish efficacy that would support a labeled indication for treatment of non-metastatic CRPC after PSA progression on ADT. Because ADT is an unproven therapy for this condition with serious long-term toxicity, the committee will be asked whether approval of a new therapy in conjunction with continued ADT would be appropriate for patients with non-metastatic CRPC.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 30, 2011. Oral presentations from the public will be scheduled between approximately 10:30 to 11 a.m., and 3 to 3:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 22, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 23, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Caleb Briggs at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 20, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–18877 Filed 7–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee

of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 17, 2011, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Diem-Kieu Ngo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *Fax:* 301–847–8533, *e-mail: PCNS@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On October 17, 2011, the committee will discuss supplemental new drug application (sNDA) 21641 (013) for AZILECT (rasagiline mesylate) Tablets, manufactured by Teva Neuroscience, Inc., for the following proposed indication: Treatment of patients with idiopathic (of unknown cause) Parkinson's disease to slow clinical progression and treat the signs and symptoms of Parkinson's disease as initial monotherapy (the single drug used to treat) and as adjunct (additional) therapy to levodopa.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 30, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 22, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 23, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Diem-Kieu Ngo at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 20, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–18875 Filed 7–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Institutional Training Grant Review.

Date: October 11, 2011.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Beata Buzas, PhD, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, RM 2081, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov.*

Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18860 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA—Member Conflict applications—K Series.

Date: August 2, 2011.

Time: 2 to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga Srinivas, PhD, Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18862 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Biomedical Research Review Subcommittee, Biomedical Research Review Subcommittee (AA–1).

Date: October 18–19, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Philippe Marmillot, PhD, Scientific Review Officer, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, RM 2019, Bethesda, MD 20892, 301–443–2861, marmillotp@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18868 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Heart Failure Clinical Research Network.

Date: August 18, 2011.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Keith A. Mintzer, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–435–0280, *mintzerk@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 20, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18905 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: September 15–16, 2011.

Closed: September 15, 2011, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Open: September 16, 2011, 8 a.m. to Adjournment.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, PhD, Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC 6200, Bethesda, MD 20892, (301) 594–4499, *hagana@nigms.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/About/Council/* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: *July 20, 2011.*

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18901 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of Program Project (P01) Applications.

Date: August 11, 2011.

Time: 1 to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lisa Dunbar, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594 –2849, *dunbarl@mail.nih.gov*.

This notice is being submitted for publication less than 30 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 20, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18898 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Therapy.

Date: August 4, 2011.

Time: 1 to 2:30 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: Syed M Quadri, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AR–10–112: Development of Outcome Measures to Determine Success of Hearing Health Care.

Date: August 17, 2011.

Time: 1 to 3 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: Lynn E Luethke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Kidney Pathophysiology.

Date: August 22, 2011.

Time: 10:30 a.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: Mushtaq A Khan, D.V.M., PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@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 19, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18894 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.

Date: November 3–4, 2011.

Time: November 3, 2011, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Time: November 4, 2011, 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Contact Person: Arthur A. Petrosian, PhD, Chief Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 19, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18876 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical, Treatment and Health Services Research Review Subcommittee.

Date: October 11, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katrina L. Foster, PhD, Scientific Review officer, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, RM. 2019, Rockville, MD 20852, 301–443–4032, *katrina@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18874 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Epidemiology, Prevention and Behavior Research Review Subcommittee AA–2 Study Section—Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: November 3, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katrina L. Foster, PhD, Scientific Review Administrator, National Institutes on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, RM. 3037, Rockville, MD 20852, 301–443–3037, *katrina@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18873 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Neuroscience Review Subcommittee.

Date: November 10, 2011.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Beata Buzas, PhD, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, RM 2081, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18863 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, RFA AA–12–001 DNA Repository for the NIAAA NESARC—III (U24).

Date: August 5, 2011.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard A. Rippe, PhD, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18861 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Vascular Biology Members.

Date: August 16, 2011.

Time: 1:30 to 3 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: Larry Pinkus, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorder Special Emphasis Panel—Post-Mortem Studies.

Date: August 17, 2011.

Time: 3 to 4:30 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: Julius Cinque, M.S., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@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 20, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18858 Filed 7–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000 L13100000 PP0000 LXSIOSHL0000]

Renewal of Approved Information Collection, OMB Control Number 1004–0201

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM)

announces its intention to request that the Office of Management and Budget (OMB) renew OMB Control Number 1004–0201 for the paperwork requirements in 43 CFR parts 3900, 3910, 3920, and 3930, which pertain to management of oil shale.

DATES: Please submit your comments to the BLM at one of the addresses below on or before September 26, 2011.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–912–7181.

Electronic mail: *Jean_Sonneman@blm.gov.*

Please indicate ''Attn: 1004–0201'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Vince Vogt at 202–912–7125. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to contact Mr. Vogt.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), require that interested members of the public and affected agencies be provided an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)). The Paperwork Reduction Act 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.

This notice identifies information collections that are contained in 43 CFR Parts 3900, 3910, 3920, and 3930. The BLM will request that the OMB renew its approval of this information collection activity for a 3-year term. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany the BLM's submission of the information collection requests to OMB.

All comments will become a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Oil Shale Management (43 CFR Parts 3900, 3910, 3920, and 3930).

Form: Under 43 CFR 3904.12, bonds must be filed on an approved BLM form. However, the BLM has not yet developed the form because this information collection has not yet been activated.

OMB Control Number: 1004–0201.

Abstract: Section 369 of the Energy Policy Act (codified at 42 U.S.C. 15927 and amendments to 30 U.S.C. 241) authorizes the BLM to collect information from applicants for oil shale leases, oil shale lessees, and operators. This collection enables the BLM to:

(1) Learn the extent and qualities of the public oil shale resource;

(2) Evaluate the environmental impacts of oil shale leasing and development;

(3) Determine the qualifications of prospective lessees to acquire and hold Federal oil shale leases;

(4) Administer statutes applicable to oil shale mining, production, resource recovery and protection, operations under oil shale leases, and exploration under leases and licenses;

(5) Ensure lessee compliance with applicable statutes, regulations, and lease terms and conditions; and

(6) Ensure that accurate records are kept of all Federal oil shale produced.

Frequency: On occasion.

Description of Respondents: Applicants for oil shale leases, oil shale lessees, and operators.

Estimated Reporting and Recordkeeping ''Hour'' Burden: 24 responses and 1801 hours annually. The following table details the individual components and respective hour burdens of this information collection request:

Type of response A.	Number of responses B.	Hours per response C.	Total time (B × C) D.
Application for waiver, suspension, or reduction of rental or payment in lieu of production; application for reduction in rate of royalty; or application for waiver of royalty 43 CFR 3903.54(b))	1	40	40
Bonding requirements 43 CFR subpart 3904 Form 3904.12	1	1	1
Individual lease, exploration license, and reclamation bonds § 3904.14(c)(1))	1	1	1
Application for an exploration license, § 3910.31(a) through (e)	1	24	24
Notice seeking participation in an exploration license, § 43 CFR 3910.31(f)	1	1	1
Collection and submission of data obtained under an exploration license, § 3910.44	1	8	8
Response to call for expression of leasing interest, § 3921.30	1	4	4
Application for a lease—Individuals, §§ 3902.23, 3922.20, and 3922.30	1	300	300
Application for a lease—Associations, §§ 3902.24, 3922.20, and 3922.30	1	300	300
Application for a lease—Corporations, §§ 3902.25, 3922.20, and 3922.30	1	300	300
Sealed bid, § 3924.10	1	8	8
Application to convert research, development, and demonstration lease to commercial lease, § 3926.10(c)	1	308	308
Drill and geophysical logs § 3930.11(b)	1	19	19
New geologic information, § 3930.20(b)	1	19	19
Plan of development, § 3931.11	1	308	308
Application for suspension of lease operations and production, § 3931.30	1	24	24
Exploration plan, § 3931.41	1	24	24
Modification of approved exploration plan or plan of development, § 3931.50	1	24	24
Production maps and production reports, § 3931.70	1	16	16

Type of response A.	Number of responses B.	Hours per response C.	Total time (B × C) D.
Records of core or test holes, § 3931.80	1	16	16
Application for modification of lease size, §§ 3932.10(b) and 3932.30(c)	1	12	12
Assignment or sublease, § 3933.31	1	10	10
Relinquishment § 3934.10	1	18	18
Production and sale records, § 3935.10	1	16	16
Totals	24		1801

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: Fixed fees in the amount of $355 and case-by-case cost-recovery fees in the amount of $526,177.

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2011–18840 Filed 7–25–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L12100000.XP0000LXSS 150A00006100.241A]

State of Arizona Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC) will meet in Phoenix, Arizona, as indicated below.

DATES: Meetings will be held on August 23–24, 2011, from 8 a.m. until 4:30 p.m. each day.

ADDRESSES: The meetings will be held at the BLM National Training Center located at 9828 North 31st Avenue, Phoenix, Arizona 85051.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Arizona RAC Coordinator at the Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Arizona. Planned agenda items include: a welcome and introduction of Council members; BLM State Director's update on BLM programs and issues; updates on the Arizona Water Strategy, Land Use Planning/Public Involvement; followup on RAC recommendations on Renewable Energy Projects and the Northern Arizona Proposed Mineral Withdrawal Draft Environmental Impact Statement; presentation and RAC recommendations on the Red Rock Pass Program; RAC questions on District Managers' Reports; reports by the RAC working groups; and other items of interest to the RAC. Members of the public are welcome to attend the RAC Working Group meetings on August 23 and the Business meeting on August 24. A half-hour public comment period is scheduled on August 24 from 11:15 to 11:45 a.m. for any interested members of the public who wish to address the Council on BLM or Forest Service recreation fee programs and business. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited. Written comments may also be submitted during the meeting for the RAC's consideration. Final meeting agendas will be available two weeks prior to the meetings and posted on the BLM Web site at: *http://www.blm.gov/az/st/en/res/rac.html.* Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact the RAC Coordinator listed above no later than two weeks before the start of the meeting. Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the Recreation Resource Advisory Council (RRAC) and has the authority to review all BLM and Forest Service recreation fee proposals in Arizona. The RRAC will review the Forest Service's Red Rock Pass Program proposals at this.

James G. Kenna,

Arizona State Director.

[FR Doc. 2011–18823 Filed 7–25–11; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDB00100 LF10000PP.HT0000 LXSS020D0000 4500020817]

Notice of Temporary Closure of Roads and Trails on Public Lands Adjacent to Big Willow Creek in Payette County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Closure.

SUMMARY: Notice is hereby given that the Big Willow closure to motorized vehicle use is in effect on public lands administered by the Four Rivers Field Office, Bureau of Land Management (BLM).

DATES: The closure will be enforced immediately and will remain in effect for 2 years following the date this notice is published in the **Federal Register** or until rescinded or modified by the authorized officer or designated Federal officer.

FOR FURTHER INFORMATION CONTACT: Terry Humphrey, Four Rivers Field Manager, at 3948 Development Avenue, Boise, Idaho 83705, via e-mail at *thumphrey@blm.gov,* or phone (208) 384–3430. 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: This notice affects closure of approximately 37 miles of roads and trails in an area

of Payette County, Idaho, located approximately 14 miles northwest of Emmett, Idaho. All roads and trails on the following described public lands, all of which are contiguous, are closed to motorized vehicle use.

Boise Meridian

T. 8 N., R. 2 W.,
Sec. 5, lot 4;
Sec. 6, all;
Sec. 7, lot 1, portions of the NW¼NE¼ and NE¼NW¼ north and west of Big Willow Road.
T. 8 N., R. 3 W.,
Sec. 1, lots 1, 3, 4, S½N½, N½S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, N½S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, SW¼, N½SE¼;
Sec. 4, lot 1, SE¼NE¼, E½SE¼;
Sec. 8, portion of the SE¼SE¼ south and east of Stone Quarry Road;
Sec. 9, NE¼, E½NW¼, portion of the SW¼NW¼ south and east of Stone Quarry Road, N½S½, and portion of the SW¼SW¼ north and west of Big Willow Road;
Sec. 10, W½NW¼, and portion of the N½SW¼ north of Big Willow Road;
Sec. 12, E½NE¼, SW¼NE½, and SE¼NW¼.
T. 9 N., R. 2 W.,
Sec. 19, lot 4, and S½SE¼;
Sec. 28, S½SW¼, and portion of the S½SE¼ south and west of Dry Creek Road;
Sec. 29, S½;
Sec. 30, lots 1, 2, 3, 4, W½NE¼, E½NW¼, E½SW¼, SE¼;
Sec. 31, lots 2, 3, 4, NE¼, E½NW¼, E½SW¼, SE¼;
Sec. 32, all;
Sec. 33, portion of NE¼NE¼ south and west of Dry Creek Road, NW¼NE¼, N½NW¼;
Sec. 34, portion of NW¼NW¼ south and west of Dry Creek Road.
T. 9 N., R. 3 W,
Sec. 25, NE¼, E½NW¼, SW¼NW¼, SW¼, N½SE¼, SW¼SE¼;
Sec. 26, S½NE¼, NE¼SW¼, SE¼;
Sec. 34, SE¼SW¼ and SE¼;
Sec. 35, all.

The area described contains approximately 7,134 acres.

Closure of these routes to motorized vehicle use is necessary because habitat for Packard's milkvetch (*Astragalus cusickii* var. *packardiae*), a candidate species under the Endangered Species Act (ESA), is at risk from further damage by motorized vehicles. The 1988 Cascade Resource Management Plan (RMP) classified off-highway vehicle (OHV) use in the area as limited to existing or designated roads and trails. At that time, approximately 37 miles of roads and trails existed on the area's public lands. The Cascade RMP effectively closed all other lands in the area to OHV use. Nonetheless, by 2009, the number of road and trail miles in the area had grown to 160 (a 430 percent increase). The proliferation of unauthorized routes was a primary factor in the U.S. Fish and Wildlife Service (FWS) decision in November 2010 to identify Packard's milkvetch as a candidate species under the ESA. Unauthorized OHV activity is causing direct (*e.g.* destruction of plants) and indirect impacts (*e.g.* increased sediment from adjacent areas and introduction/expansion of noxious and invasive weeds into milkvetch habitat) to the species. The FWS has assigned a Listing Priority Number 3 rating to the Packard's milkvetch. This rating ranks species on a 1 (highest) to 12 (lowest) scale to reflect the relative risk of extinction and the impact of the loss of the species as a whole. Closure of the 37 miles of roads and trails will prevent further establishment of unauthorized OHV roads and trails and help prevent further impacts to, and ensure suitable conditions for, Packard's milkvetch plants and their associated habitat. When added to the existing restrictions on OHV use in the 1988 Cascade RMP, the closure will serve to protect the species and its habitat on 7,134 acres of public lands.

The BLM will post closure signs at main entry points to the closed area and/or other locations on-site. This closure will be posted in the Boise District BLM office. Maps of the affected area and other associated documents are available at 3948 Development Avenue, Boise, Idaho 83705. Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7 and 43 CFR 8364.1, the BLM will enforce the following rule within the Big Willow closure:

Motorized vehicles must not be used on the closed roads and trails.

Exemptions: The following persons are exempt from this order: Federal, State, and local Law Enforcement officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and persons with written authorization from the BLM.

Penalties: Any person who violates the above rule may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Violators may also be subject to the enhanced fines provided for in 18 U.S.C. 3571.

Authority: 43 CFR 8364.1.

Terry Humphrey,
Four Rivers Field Manager.

[FR Doc. 2011–18843 Filed 7–25–11; 8:45 am]
BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Intent To Prepare an Environmental Assessment and Scoping for an Evaluation of Alternatives To Revitalize the Jefferson National Expansion Memorial, Missouri

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)(C)), the National Park Service (NPS) will prepare an Environmental Assessment (EA) for an evaluation of alternatives to revitalize the Jefferson National Expansion Memorial (Memorial), St. Louis, Missouri. The proposed action involves physical changes to the Memorial grounds and facilities as a method for improving visitor access and experience, while better integrating the Memorial into the downtown St. Louis area. The NPS will use this EA process to engage the public through scoping, develop a range of reasonable alternatives for implementing the proposed action, and analyze the impacts of the alternatives.

This notice initiates the scoping process for the EA and invites the public, government agencies, and other interested persons and organizations to provide comments. If at any point during the preparation of the EA the NPS determines that it is necessary to prepare an environmental impact statement (EIS) for this proposal, comments submitted during this scoping process will be considered in the development of the EIS.

DATES: When the EA is completed, NPS will hold meetings to provide an opportunity for the public to comment. Details regarding the exact times and locations of these meetings will be announced on the NPS's Planning, Environment and Public Comment (PEPC) Web site, at *http://parkplanning.nps.gov/jeff,* and through local and regional media at least 15 days in advance of the meetings.

ADDRESSES: Comments may be submitted through the PEPC Web site at *http://parkplanning.nps.gov/jeff.* You may also mail or hand-deliver comments to the Superintendent, Jefferson National Expansion Memorial, 11 North 4th Street, St. Louis, Missouri 63102.

FOR FURTHER INFORMATION CONTACT: Superintendent, Jefferson National Expansion Memorial, at the address above.

SUPPLEMENTARY INFORMATION: The NPS completed a General Management Plan/Environmental Impact Statement (GMP/EIS) for the Memorial in October 2009 and the record of Decision (ROD) was signed in November 2009. The selected alternative in the ROD allowed for a design competition to guide the future development of the Memorial. The intent of the competition was to identify ways to seamlessly integrate the park and surrounding areas into the St. Louis region, while honoring the Arch and the grounds immediately surrounding. The design competition began in December 2009 and the winning team was selected in September 2010. The winning concept was subsequently refined and presented to the public in January 2011.

The 2009 GMP/EIS provided a broad analysis of potential impacts of the expansion of programs and facilities at the Memorial; this EA will provide a more site-specific analysis. Council on Environmental Quality regulations (40 CFR 1502.20) encourage the use of a tiering process in these types of situations. Department of the Interior regulations implementing NEPA (43 CFR 46.140) state that an '' * * * environmental assessment prepared in support of an individual proposed action can be tiered to a programmatic or other broader-scope environmental impact statement. Tiering to the programmatic or broader-scope environmental impact statement would allow the preparation of an environmental assessment and a finding of no significant impact for the individual proposed action, so long as any previously unanalyzed effects are not significant.'' In addition, NPS consultation, in accordance with Section 106 of the National Historic Preservation Act, began in January 2011, and the NEPA process will be integrated with the section 106 process as much as possible to coordinate public review and other consultative requirements of both laws.

A scoping newsletter will be prepared which identifies the draft statements of purpose, need, and objectives, as well as issues and preliminary alternative concepts, as identified to date. Copies of that information and other updates may be obtained online from the PEPC Web site or at the address and phone numbers listed above. If you wish to comment, you may submit your comments via the Internet through PEPC, at one of the public meetings, and by mailing or hand-delivering comments to the address noted above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments will not be accepted by fax, e-mail, or in any way other than those specified above.

Dated: May 6, 2011.

Michael T. Reynolds,

Regional Director, Midwest Region.

[FR Doc. 2011–18825 Filed 7–25–11; 8:45 am]

BILLING CODE 4312–AW–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–NACE–0411–7112; 3501–PZY]

Draft Anacostia Park Wetland and Resident Canada Goose Management Plan/Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Draft Anacostia Park Wetland and Resident Canada Goose Management Plan/Environmental Impact Statement (Plan/DEIS) for Anacostia Park (Park), Washington, DC. The draft Plan/DEIS evaluates the impacts of several management alternatives that address managing wetlands and resident Canada geese at the Park. It also assesses the impacts that could result from continuing the current management framework in the no action alternative. The selected alternative will describe the wetland management and Canada goose management strategies that will guide future actions at the Park for 15 years.

DATES: The NPS will accept comments on the Plan/DEIS for 60 days following publication by the U.S. Environmental Protection Agency (EPA) of the Notice of the Availability of the Draft Environmental Impact Statement. After the EPA Notice of Availability is published, the NPS will schedule public meetings during the comment period. Dates, times, and locations of these meetings will be announced in press releases, e-mail announcements, and on the NPS Planning, Environment, and Public Comment (PEPC) Web site for the project at *http://www.parkplanning.nps.gov/ANAC* .

ADDRESSES: Information will be available for public review and comment online at: *http://www.parkplanning.nps.gov/ANAC.* Copies of the Plan/DEIS will be available in the office of the Superintendent, National Capital Parks—East, 1900 Anacostia Drive, SE., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Chief of Resource Management Division, National Capital Parks—East headquarters in Anacostia Park at the address above or by telephone at (202) 690–5160.

SUPPLEMENTARY INFORMATION: Tidal wetland restoration efforts at Anacostia Park have been jeopardized by grazing resident Canada geese. Action is needed at this time to manage the restored wetlands at the Park. The Plan/DEIS will be an integrated tool designed to allow for the long-term planning and management for both wetlands and resident Canada geese at the Park.

This Plan/DEIS evaluates five alternatives—a No Action Alternative (A) and four Action Alternatives (B (preferred), C, D, and E). These are summarized briefly here. Other alternatives were explored but dismissed; these are discussed in some detail in the draft Plan/EIS.

- Alternative A—No Action—Park wetlands and the resident goose population would continue to be managed using the current wetland and goose management techniques which include: Invasive species management, trash management, public education, goose egg oiling, goose population monitoring, goose exclusion fencing, and wetland vegetation planting.
- Alternative B—Preferred—Very High Level of Wetland and Goose Management—The most aggressive wetlands management techniques would be combined with intensive goose management techniques. Proposed extensive wetland restoration opportunities could include: Managing invasive species, shoreline protection, restoration of tidal guts, and daylighting. Goose management techniques include: Lethal control, scare and harassment, habitat alteration, and reproduction control such as egg oiling.
- Alternative C—High Level of Wetlands Management with Moderate Level of Goose Management—This alternative combines aggressive wetlands management options with a moderate level of lethal goose management techniques. Some of the wetland management techniques could include managing invasive species and

planting throughout the wetlands. The goose management techniques include: Less intensive population reduction than in alternative B; habitat modification by planting buffers along the shoreline; scare and harassment techniques in certain areas; and reproduction control.

• Alternative D—Low Level of Wetlands Management and Low Goose Management—Wetland management techniques include a removal of structures or obstacles resulting in severe erosion of the shoreline and wetland areas as well as management of invasive species. There would be no new wetland restoration or new cultural/educational efforts under this alternative. The goose management techniques would include no initial lethal resident goose population reduction activities; however, there could be a one-time population reduction if other goose management techniques, such as habitat modification and reproduction control, do not keep the goose population at the sustainable threshold level.

• Alternative E—Very High Level of Wetlands Management with Moderate Goose Management with No Lethal Control—Wetland management techniques include erosion control and invasive species management. The resident goose management techniques would have no initial or follow-up lethal control; however, habitat modification, scare and harassment, and reproductive control would be allowed.

You may submit your comments by any one of several methods. You may submit your comments online on the PEPC Web site at: *http://www.parkplanning.nps.gov/ANAC.* Comments can be mailed to Alex Romero, Superintendent, National Capital Parks—East, 1900 Anacostia Drive, SE., Washington, DC 20020. You may also contact the Superintendent by facsimile at (202) 690–1425. Finally, you may hand-deliver comments to the National Capital Parks—East headquarters in Anacostia Park at the address above. Before including your address, telephone number, electronic 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all submissions from organizations or businesses, from individuals identifying themselves as representatives or officials, of organizations or businesses, available for public inspection in their entirety.

Dated: March 18, 2011.

Woody Smeck,

Acting Regional Director, National Capital Region.

[FR Doc. 2011–18829 Filed 7–25–11; 8:45 am]

BILLING CODE 4312–JK–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–WRST–DENA;9924–PYS]

Alaska Region's Subsistence Resource Commission (SRC) Program; Public Meeting and Teleconference

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting and teleconference.

SUMMARY: The Wrangell-St. Elias National Park SRC and the Denali National Park SRC will meet to develop and continue work on National Park Service (NPS) subsistence program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: The Wrangell-St. Elias National Park SRC will meet August 4, 2011, from 9 a.m. to 12 p.m. The Denali National Park SRC will meet August 27, 2011, from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT:

For the Wrangell-St. Elias National Park SRC Meeting: Barbara Cellarius, Subsistence Manager, (907) 822–7236, or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Wrangell-St. Elias National Park SRC membership contact the Superintendent, Wrangell-St. Elias National Park & Preserve, Mile 106.8 Richardson Highway, PO Box 439, Copper Center, AK 99573, (907) 822–5234, or fax (907) 822–7216 or visit the park Web site at: *http://www.nps.gov/wrst/contacts.htm.*

For the Denali National Park SRC Meeting Contact: Amy Craver, Subsistence Manager, (907) 683–9544, or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Denali National Park SRC membership contact the Superintendent, Denali National Park and Preserve, P. O. Box 9, Denali Park, AK 99755, (907) 683–2294, or fax (907) 683–9617 or visit the park Web site at: *http://www.nps.gov/dena/contacts.htm.*

SUPPLEMENTARY INFORMATION:

Public Availability of Comments: These meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. Each meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after each meeting. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If the meeting dates and locations are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting locations and dates may need to be changed based on inclement weather or exceptional circumstances.

Wrangell-St. Elias National Park SRC Teleconference Meeting Date And Location: The Wrangell-St. Elias National Park SRC will meet at the Wrangell-St. Elias National Park and Preserve headquarters office in Copper Center, Alaska on Thursday, August 4, 2011, from 9 a.m. to 12 p.m. Teleconference meeting participants should contact Barbara Cellarius by e-mail [*Barabara_Cellarius@nps.gov*] or by telephone at (907) 822–7236 to receive a toll-free call-in telephone number on or before Monday, August 1, 2011. The number of teleconference lines is limited and available on a first come first serve basis.

Proposed Wrangell-St. Elias National Park SRC Agenda

1. Call to order.
2. Welcome and Introductions.
3. Administrative Announcements.
4. Approve Agenda.
5. Approval of Minutes.
6. Review SRC Purpose and Membership.
7. SRC Member Reports.
8. Public and Other Agency Comments.
9. Federal Subsistence Board Update.
10. Alaska Board of Game Update.

11. Old Business:
a. Nabesna Off-Road Vehicle Management Plan Final Environmental Impact Statement.
b. Subsistence Uses of Bones, Horn, Antlers and Plants Environmental Assessment Update.
12. New Business.
13. Public and other Agency Comments.
14. SRC Work Session.
15. Select Time and Location for Next Meeting.
16. Adjourn Meeting.

For the Denali National Park SRC meeting date and location: The Denali National Park SRC will meet at the Cantwell Community Center in Cantwell, Alaska on Saturday, August 27, 2011, from 9 a.m. to 5 p.m.

Proposed Denali National Park SRC Meeting Agenda

1. Call to order.
2. Welcome and Introductions.
3. Administrative Announcements.
4. Approve Agenda.
5. Approval of Minutes.
6. Review SRC Purpose and Membership.
7. SRC Member Reports.
8. Public and Other Agency Comments.
9. Federal Subsistence Board Update.
10. Alaska Board of Game Update.
11. Old Business:
a. Subsistence Uses of Bones, Horn, Antlers and Plants Environmental Assessment Update.
b. Timber Harvest Plan.
12. New Business:
a. Subsistence Manager Report.
b. Ranger Report.
c. Denali National Park and Preserve Resource Management Report.
13. Public and other Agency Comments.
14. SRC Work Session.
15. Set Time and Place for next SRC Meeting.
16. Adjourn Meeting.

Debora Cooper,
Associate Regional Director, Alaska.

[FR Doc. 2011–18827 Filed 7–25–11; 8:45 am]
BILLING CODE 4312–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[1730–SZM]

Cape Cod National Seashore; South Wellfleet, MA; Cape Cod National Seashore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Two Hundred Eightieth Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10) of a meeting of the Cape Cod National Seashore Advisory Commission.

DATES: The meeting of the Cape Cod National Seashore Advisory Commission will be held on September 12, 2011, at 1 p.m.

ADDRESSES: The Commission members will meet in the meeting room at Headquarters, 99 Marconi Station, Wellfleet, Massachusetts.

SUPPLEMENTARY INFORMATION: The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The regular business meeting is being held to discuss the following:
1. Adoption of Agenda.
2. Approval of Minutes of Previous Meeting (May 23, 2011).
3. Reports of Officers.
4. Reports of Subcommittees.
5. Superintendent's Report:
Update on Dune Shacks,
Improved Properties/Town Bylaws,
Herring River Wetland Restoration,
Wind Turbines/Cell Towers,
Flexible Shorebird Management,
Highlands Center Update,
Alternate Transportation funding,
Ocean stewardship topics—shoreline change, Climate Friendly Park program update, 50th Anniversary.
6. Old Business.
7. New Business.
8. Date and agenda for next meeting.
9. Public comment, and
10. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: July 18, 2011.

George E. Price, Jr.,
Superintendent.

[FR Doc. 2011–18830 Filed 7–25–11; 8:45 am]
BILLING CODE 4310–WV–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–525]

Remanufactured Goods: An Overview of the U.S. and Global Industries, Markets, and Trade; Institution of Investigation and Scheduling of Public Hearing

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: Following receipt of a request dated and received June 28, 2011 from the U.S. Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–525, Remanufactured Goods: An Overview of the U.S. and Global Industries, Markets, and Trade.

DATES:
January 31, 2012: Deadline for filing requests to appear at the public hearing.
February 9, 2012: Deadline for filing pre-hearing briefs and statements.
February 28, 2012: Public hearing.
March 8, 2012: Deadline for filing post-hearing briefs.
May 20, 2012: Deadline for filing all other written submissions.
October 28, 2012: Transmittal of Commission report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader Alan Treat (202–205–

3426 or *alan.treat@usitc.gov*) or Deputy Project Leader Jeremy Wise (202–205–3190 or *jeremy.wise@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: As requested by USTR, the Commission will conduct an investigation and prepare a report that provides an overview of the U.S. remanufactured goods industries and markets, estimates U.S. and global trade in remanufactured goods to the extent possible, and examines factors affecting trends in remanufactured goods trade. The Commission's report will focus on remanufacturing-intensive sectors in the U.S. economy that account for the majority of remanufacturing activity in the United States. For the purpose of its analysis, the Commission will define remanufactured goods as non-agricultural goods that are entirely or partially comprised of parts that (i) Have been obtained from the disassembly of used goods; and (ii) have been processed, cleaned, inspected, and tested to the extent necessary to ensure they have been restored to original working condition or better; and for which the remanufacturer has issued a warranty. The Commission will base its report on a review of available data and other information, including the collection of primary data through a survey of enterprises engaged in remanufacturing. The report will cover the period 2009–11, and to the extent practicable will estimate and describe the following:

- The size and scope of remanufacturing in the United States, including principal producers, levels of employment, investment, and sales (including in the domestic market and exports);
- The U.S. market for remanufactured goods, including the goods supplied by domestic producers;
- U.S. exports of remanufactured goods, including by primary export sector and leading export destinations. The report will also compare U.S. exports of remanufactured goods to free trade agreement (FTA) partners with exports to non-FTA partners. To the extent possible, the report will also include information on the level of U.S. imports of remanufactured goods as well as the level of imports of ''cores'' (used goods acting as the primary component input(s)) and the principal sources for these products; and
- The factors affecting sales, trade, and investment in U.S. remanufactured goods, including a discussion of recent trends.

To the extent possible, the report will also include the following:

- An assessment of foreign direct investment (FDI) in U.S. remanufacturing, including associated employment and the extent to which foreign firms have invested in U.S. enterprises producing remanufactured goods;
- An overview of outward FDI in remanufacturing by leading U.S.-based firms, including their major markets;
- An analysis of trade by foreign remanufacturers invested in the United States, include trade in ''cores''; and
- An overview of the global markets for remanufactured goods and enterprises engaged in remanufacturing.

The USTR asked that the Commission deliver its report no later than October 28, 2012.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on Tuesday, February 28, 2012. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., January 31, 2012, in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., February 9, 2012; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., March 8, 2012. In the event that, as of the close of business on January 31, 2012, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202–205–2000 after January 31, 2012, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., May 20, 2012. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). 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 on Electronic Filing Procedures, *http://www.usitc.gov/docket_services/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In his request letter, the USTR stated that he intends to make the Commission's report available to the public in its entirety, and asked that the Commission not include any confidential business information or national security classified information in the report. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: July 20, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–18796 Filed 7–25–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–847 and 849; Second Review]

Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Japan and Romania; Scheduling of Expedited Five-Year Reviews Concerning the Antidumping Duty Orders on Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and Romania

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on carbon and alloy seamless standard, line, and pressure pipe from Japan and Romania would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 5, 2011, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 18251, April 1, 2011) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on August 22, 2011, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before August 25, 2011 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by August 25, 2011. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 20, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–18795 Filed 7–25–11; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by U.S. Steel Corp. and V&M STAR to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Current Population Survey Volunteer Supplement

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the revised Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Current Population Survey Volunteer Supplement,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before August 25, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRA*Main, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics (BLS), Office

of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Volunteer Supplement to the Current Population Survey provides information on the total number of individuals in the U.S. involved in unpaid volunteer activities, the frequency and intensity with which individuals volunteer, types of organizations for which they volunteer, the activities in which volunteers participate, and the prevalence of volunteering more than 120 miles from home or volunteering abroad. It also provides information on civic engagement and charitable donations. The BLS has made certain minor changes to the Supplement, such as updating dates and similar minor items, which require this ICR to be characterized as a revision; however, those changes are not expected to change public burdens.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0176. The current OMB approval is scheduled to expire on August 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on March 15, 2011 (76 FR 14106).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0176. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Current Population Survey Volunteer Supplement.

OMB Control Number: 1220–0176.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 63,000.

Total Estimated Number of Responses: 106,000.

Total Estimated Annual Burden Hours: 5300.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 20, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–18813 Filed 7–25–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

United States-Peru Trade Promotion Agreement Notice of Determination Regarding Review of Submission #2010–03

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice.

SUMMARY: The Office of Trade and Labor Affairs (OTLA) gives notice that on July 19, 2011, Submission #2010–03 was accepted for review pursuant to Article 17.2 of Chapter 17 (the Labor Chapter) of the United States-Peru Trade Promotion Agreement (PTPA).

The submission was filed with OTLA on December 29, 2010, by a Peruvian union, the *Sindicato Nacional de Unidad de Trabajadores de Superintendencia Nacional de Administración Tributaria* (SINAUT–SUNAT). The submission alleges the Government of Peru has violated Article 17.2 of the Labor Chapter of the PTPA by failing to adopt and maintain in its statutes and regulations, and practices thereunder, the effective recognition of the right to collective bargaining as stated in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and its Follow-Up. SINAUT–SUNAT alleges that the employer, *Superintendencia Nacional de Administración Tributaria* (SUNAT) has refused to negotiate in good faith and engage constructively at various stages of the collective bargaining process, as required by Peruvian law. These allegations are supported by facts which, if substantiated, could demonstrate that the Government of Peru's actions were inconsistent with its commitments under the Labor Chapter.

The objective of the review of the submission will be to gather information so that OTLA can better understand the allegations therein and publicly report on the U.S. Government's views regarding whether the Government of Peru's actions were consistent with its obligations under the Labor Chapter of the PTPA.

DATES: *Effective Date:* July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Gregory Schoepfle, Director, OTLA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5303, Washington, DC 20210. *Telephone:* (202) 693–4900. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Article 17.5.5(c) of the Labor Chapter of the PTPA establishes that each Party's contact point shall provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to provisions of the Labor Chapter and pursuant to Article 17.5.6, shall review such communications in accordance with domestic procedures. On December 14, 2006, the Department of Labor's OTLA was designated as the contact point for administering the labor provisions in free trade agreements, including the PTPA [71 FR 76691 (2006)].

The same **Federal Register** notice informed the public of the Procedural Guidelines that OTLA would follow for the receipt and review of public submissions. These Procedural Guidelines are available at *http://www.dol.gov/ilab/programs/otla/proceduralguidelines.htm.* According to

the definitions contained in the Procedural Guidelines (Section B) a ''submission'' is ''a communication from the public containing specific allegations, accompanied by relevant supporting information, that another Party has failed to meet its commitments or obligations arising under a labor chapter or Part Two of the NAALC.'' Pursuant to Section F.2, the submission shall identify clearly the person filing the submission and shall be signed and dated. It shall state with specificity the matters that the submitter requests the OTLA to consider and include supporting information available to the submitter, including, wherever possible, copies of laws or regulations that are the subject of the submission.

The Procedural Guidelines specify that OTLA shall consider six factors, to the extent that they are relevant, in determining whether to accept a submission for review:

(1) Whether the submission raises issues relevant to any matter arising under a labor chapter;

(2) Whether a review would further the objectives of a labor chapter;

(3) Whether the submission clearly identifies the person filing the submission, is signed and dated, and is sufficiently specific to determine the nature of the request and permit an appropriate review;

(4) Whether the statements contained in the submission, if substantiated, would constitute a failure of the other Party to comply with its obligations or commitments under a labor chapter;

(5) Whether the statements contained in the submission or available information demonstrate that appropriate relief has been sought under the domestic laws of the other Party, or that the matter or a related matter is pending before an international body; and

(6) Whether the submission is substantially similar to a recent submission and significant, new information has been furnished that would substantially differentiate the submission from the one previously filed.

In the present case, a Peruvian union, the *Sindicato Nacional de Unidad de Trabajadores de Superintendencia Nacional de Administración Tributaria* (SINAUT–SUNAT) that represents workers at the National Superintendency of Tax Administration (SUNAT) filed a submission with OTLA on December 29, 2010, which alleges that the Government of Peru, through SUNAT, has failed to live up to its commitments under Article 17.2.1 of the PTPA by not effectively recognizing the right to collective bargaining. The submission alleges that the Government of Peru is failing to comply with the legal requirements for collective bargaining by denying the union's request to submit their dispute to arbitration after a prolonged negotiation and conciliation process has failed to resolve the dispute.

After reviewing the submission, and additional supplementary information provided by the submitters, OTLA finds that the submission raises pertinent issues that would further the objectives of the Labor Chapter and that could, if substantiated, constitute a failure of the Government of Peru to comply with its PTPA commitments. The submission meets the filing requirements established in Section F.2 of the OTLA Procedural Guidelines and is not substantially similar to a recent submission. The submitters have sought appropriate relief under domestic laws and procedures. The OTLA has taken these factors into account and accepted the submission for review.

OTLA's decision to accept the submission for review is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission. The objective of the review of the submission will be to gather information so that OTLA can better understand the allegations therein and publicly report on the U.S. Government's views regarding whether the Government of Peru's actions were consistent with the obligations set forth in the Labor Chapter of the PTPA. The review will be completed and a public report issued within 180 days, unless circumstances, as determined by OTLA, require an extension of time, as set out in the Procedural Guidelines. The public report will include a summary of the review process, as well as findings and recommendations.

Signed at Washington, DC, on July 19, 2011.

Sandra Polaski,

Deputy Undersecretary, International Affairs.

[FR Doc. 2011–18737 Filed 7–25–11; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Massachusetts, New Mexico, and New York

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB program for Massachusetts, New Mexico, and New York.

The following changes have occurred since the publication of the last notice regarding the States' EB status:

- Based on data released by the Bureau of Labor Statistics on June 17, the three month average, seasonally adjusted total unemployment rates for Massachusetts, New Mexico, and New York fell below the 8.0% threshold necessary for a high unemployment period (HUP) in the EB program. As a result, the payable period for Massachusetts and New Mexico in HUP concluded July 9, 2011, and the payable period for New York in HUP concluded July 10, 2011. Eligibility for claimants has been reduced from a maximum potential entitlement of 20 weeks to a maximum potential entitlement of 13 weeks in the EB program.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state triggering ''off'' an HUP period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who is potentially affected (20 CFR 615.13(c)(4)).

Persons who have questions about their entitlement to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 19th day of July, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–18739 Filed 7–25–11; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement Regarding States Triggering ''Off'' of Tiers Three and Four of Emergency Unemployment Compensation 2008 (EUC08)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Announcement regarding states triggering ''off'' of Tiers Three and Four of the Emergency Unemployment Compensation (EUC08) program.

Public law 111–312 extended provisions in public law 111–92 which amended prior laws to create a Third and Fourth Tier of benefits within the EUC08 program for qualified unemployed workers claiming benefits in high unemployment states. The Department of Labor produces a trigger notice indicating which states qualify for EUC08 benefits within Tiers Three and Four and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notice covering state eligibility for the EUC08 program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

Based on data published June 17 by the Bureau of Labor Statistics, the following trigger changes have occurred for states in the EUC08 program:

• Indiana's three month average, seasonally adjusted total unemployment rate fell below the 8.5% threshold to remain ''on'' in Tier Four of the EUC08 program. The week ending July 9, 2011 was the last week in which EUC claimants in Indiana could exhaust Tier Three, and establish Tier Four eligibility. Under the phase-out provisions, claimants may receive any remaining entitlement they have in Tier Four after July 9, 2011. Eligibility for claimants has been reduced from a maximum potential entitlement of 53 weeks to a maximum potential entitlement of 47 weeks in the EUC08 program.

• Oklahoma's three month average, seasonally adjusted total unemployment rate fell below the 6% threshold to remain ''on'' in Tier Three of the EUC08 program. The week ending July 9, 2011 was the last week in which EUC claimants in Oklahoma could exhaust Tier Two, and establish Tier Three eligibility. Under the phase-out provisions, claimants may receive any remaining entitlement they have in Tier Three after July 9, 2011. Eligibility for claimants has been reduced from a maximum potential entitlement of 47 weeks to a maximum potential entitlement of 34 weeks in the EUC08 program.

Information for Claimants

The duration of benefits payable in the EUC program, and the terms and conditions under which they are payable, are governed by public laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, and 111–205, and the operating instructions issued to the states by the U.S. Department of Labor. Persons who believe they may be entitled to additional benefits under the EUC08 program, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 19th day of July, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–18738 Filed 7–25–11; 8:45 am]

BILLING CODE 4510–FW–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request: See List of Evaluation Related ICRs Planned for Submission to OMB in Section A

AGENCY: Morris K. Udall and Stewart L. Udall Foundation, U.S. Institute for Environmental Conflict Resolution.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the U.S. Institute for Environmental Conflict Resolution (the U.S. Institute), part of the Udall Foundation, is planning to submit seven Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). All seven ICRs seek revisions to currently approved collections due to expire 12/31/2011 (OMB control numbers 3320–0003, 3320–0004, 3320–2005, 3320–0006, 3320–0007, 3320–0009 and 3320–0010). The seven ICRs are consolidated under a single filing to provide a more coherent picture of information collection activities designed primarily to measure performance. The proposed collections are necessary to support program evaluation activities. The collection is not expected to have a significant economic impact on respondents or to affect a substantial number of small entities.

Before submitting the ICRs to OMB for review and approval, the U.S. Institute requests comments on specific aspects of the proposed information collection as described at the beginning of the section labeled **SUPPLEMENTARY INFORMATION.**

Supporting statements for the proposed paperwork collections can be downloaded from the Institute's Web site *http://ecr.gov/Resources/EvaluationProgram.aspx.* Paper copies can be obtained from Patricia Orr, Director of Policy, Planning and Budget, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Avenue, Tucson, Arizona 85701, *Fax:* 520–670–5530, *Phone:* 520–901–8548, *E-mail: orr@ecr.gov.*

DATES: Comments must be submitted on or before September 26, 2011.

ADDRESSES: Submit your comments, referencing this **Federal Register** Notice, by e-mail to *orr@ecr.gov,* or by fax to 520–670–5530, or by mail to the attention of Patricia Orr, Director of Policy, Planning and Budget, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Avenue, Tucson, Arizona 85701.

SUPPLEMENTARY INFORMATION:

Overview

To comply with the Government Performance and Results Act (GPRA) (Pub. L. 103–62), the U.S. Institute, as part of the Udall Foundation, produces an Annual Performance Budget and an Annual Performance and Accountability Report, linked directly to the goals and objectives outlined in the Institute's five-year Strategic Plan. The U.S. Institute's evaluation system is key to evaluating progress towards its performance goals. The U.S. Institute is committed to evaluating all of its projects, programs and services to measure and report on performance and also to use this information to learn from and improve its services. The

refined evaluation system has been carefully designed to support efficient and economical generation, analysis and use of this much-needed information, with an emphasis on performance measurement, learning and improvement.

As part of the program evaluation system, the U.S. Institute intends to collect specific information from participants in, and users of, several of its programs and services. Specifically, this Federal Notice covers seven programs and services: (1) Conflict assessment services; (2) environmental conflict resolution (ECR) and collaborative problem solving mediation services; (3) ECR and collaborative problem solving facilitation services; (4) training services; (5) facilitated meeting services; (6) roster program services; and (7) program support and services. Evaluations mainly involve administering questionnaires to process participants and professionals, as well as members and users of the National Roster. Responses by members of the public to the Institute's request for information (*i.e.,* questionnaires) are voluntary.

In 2003, the Office of Management and Budget (OMB) approved the U.S. Environmental Protection Agency, Conflict Prevention and Resolution Center (CPRC) to act as a named administrator of the U.S. Institute's currently approved information collections for evaluation. In 2008, OMB granted similar status to the U.S. Department of the Interior, Office of Collaborative Action and Dispute Resolution (CADR). The U.S. Institute, CPRC and CADR will seek approval as part of this proposed collection to continue this evaluation partnership. The U.S. Institute will also request that the U.S. Army Corps of Engineers, Conflict Resolution and Public Participation Center (CPC) be added as an additional named administrator. Since other agencies have periodically approached the U.S. Institute seeking evaluation assistance, the U.S. Institute will also request OMB approval to continue to administer the evaluation questionnaires on behalf of other agencies. The burden estimates in the ICRs take into consideration the multi-agency usage of the evaluation instruments.

Key Issues

The U.S. Institute invites comments that can be used to:

i. Evaluate whether the proposed collection of information is necessary for the proper performance of the U.S. Institute, including whether the information will have practical utility;

ii. Enhance the quality, utility, and clarity of the information to be collected;

iii. Minimize the burden of the information collection on respondents, including suggestions concerning use of automated collection techniques or other forms of information technology.

Section A. Information on Individual ICRs:

1. Conflict Assessment Services

Type of Information Collection: Revision of a currently approved collection.

Title of Information Collection: Program Evaluation Instruments for Conflict Assessment Services.

OMB Number: 3320–0003.

Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.

Frequency: One time.

Annual Number of Respondents: 430.

Total Annual Responses: 430.

Average Burden per Response: 5 minutes.

Total Annual Hours: 36.00.

Total Burden Cost: $1,700.00.

2. ECR and Collaborative Problem Solving Mediation Services

Type of Information Collection: Revision of a currently approved collection.

Title of Information Collection: Program Evaluation Instruments for ECR and Collaborative Problem Solving Mediation Services.

OMB Number: 3320–0004.

Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.

Frequency: One time.

Annual Number of Respondents: 1,975.

Total Annual Responses: 1,975.

Average Burden per Response: 18 minutes.

Total Annual Hours: 596.00.

Total Burden Cost: $27,964.00.

3. ECR and Collaborative Problem Solving Facilitation Services

Type of Information Collection: Revision of a currently approved collection.

Title of Information Collection: Program Evaluation Instruments for ECR and Collaborative Problem Solving Facilitation Services.

OMB Number: 3320–0010.

Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.

Frequency: One time.

Annual Number of Respondents: 1,975.

Total Annual Responses: 1,975.

Average Burden per Response: 12 minutes.

Total Annual Hours: 404.00.

Total Burden Cost: $19,036.00.

4. Training Services

Type of Information Collection: Revision of a currently approved collection.

Title of Information Collection: Program Evaluation Instruments for Training Services.

OMB Number: 3320–0006.

Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.

Frequency: One time.

Annual Number of Respondents: 1,560.

Total Annual Responses: 1,560.

Average Burden per Response: 5.5 minutes.

Total Annual Hours: 143.

Total Burden Cost: $6,721.

5. Facilitated Meeting Services

Type of Information Collection: Revision of a Currently Approved Collection.

Title of Information Collection: Program Evaluation Instruments for Facilitated Meeting Services.

OMB Number: 3320–0007.

Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.

Frequency: One time.

Annual Number of Respondents: 3,000.

Total Annual Responses: 3,000.

Average Burden per Response: 5 minutes.

Total Annual Hours: 252.

Total Burden Cost: $11,752.

6. Roster Program Services

Type of Information Collection: Revision of a currently approved collection.

Title of Information Collection: Program Evaluation Instruments for Roster Program Services.

OMB Number: 3320–0005.

Affected Public: Business or other for-profit, not-for-profit, federal and state, local or tribal government.

Frequency: One time.

Annual Number of Respondents: 550.

Total Annual Responses: 550.

Average Burden per Response: 3.5 minutes.

Total Annual Hours: 32.

Total Burden Cost: $1,488.

7. Program Support Services

Type of Information Collection: Revision of a currently approved collection.

Title of Information Collection: Program Evaluation Instruments for Program Support Services.

OMB Number: 3320–0009.

Affected Public: Business or other for-profit, not-for-profit, federal and state, local or tribal government.

Frequency: One time.

Annual Number of Respondents: 40.

Total Annual Responses: 40.

Average Burden per Response: 5.

Total Annual Hours: 3.33.

Total Burden Cost: $157.

Authority: 20 U.S.C. 5601–5609.

Dated: July 18, 2011.

Ellen Wheeler,

Executive Director, Udall Foundation.

[FR Doc. 2011–18769 Filed 7–25–11; 8:45 am]

BILLING CODE 6820–FN–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Designation of Eight Counties as High Intensity Drug Trafficking Areas

AGENCY: Office of National Drug Control Policy.

ACTION: Notice.

SUMMARY: The Director of the Office of National Drug Control Policy has designated eight additional counties as High Intensity Drug Trafficking Areas pursuant to 21 U.S.C. 1706. The new counties are (1) Orange County in New York as part of the New York/New Jersey HIDTA; (2) Medocino County in California as part of the Northern California HIDTA; (3) Porter County in Indiana as part of the Lake County HIDTA; (4) Lexington and Richland Counties in South Carolina as part of the Atlanta HIDTA; (5) Harford County in Maryland as part of the Washington/Baltimore HIDTA; (6) Putnam and Mercer Counties in West Virginia as part of the Appalachia HIDTA.

FOR FURTHER INFORMATION: Please direct any questions to Travis Norvell, Policy Analyst, National HIDTA Program, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20502; (202) 395–6789.

Daniel R. Petersen,

Deputy General Counsel.

[FR Doc. 2011–18749 Filed 7–25–11; 8:45 am]

BILLING CODE 3180–02–P

NATIONAL SCIENCE FOUNDATION

Notice of Buy American Waiver Under the American Recovery and Reinvestment Act of 2009

AGENCY: National Science Foundation (NSF).

ACTION: Notice.

SUMMARY: NSF is hereby granting a limited project-specific exemption of section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, 123 Stat. 115, 303 (2009), with respect to incidental items costing $10,000 or less used in and incorporated into the Alaska Region Research Vessel (ARRV) project.

DATES: July 26, 2011.

ADDRESSES: National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Leithead, Division of Acquisition and Cooperative Support, 703–292–4595.

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of the Recovery Act and section 176.80 of Title 2 of the Code of Federal Regulations, the National Science Foundation (NSF) hereby provides notice that on July 6, 2011 the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency on 27 May 2010, granted a de minimis exemption of section 1605 of the Recovery Act (Buy American provision) with respect to each incidental item costing $10,000 or less that is used in and incorporated into the ARRV project. The basis for this exemption is section 1605(b)(1) of the Recovery Act, in that executing individual exemptions for incidental items costing $10,000 or less is not in the public interest. The total cost of incidental items requiring use of this limited exemption is expected to be less than $750,000, which represents less than 0.5% of the total Recovery Act award.

I. Background

The Recovery Act appropriated $400 million to NSF for several projects being funded by the Foundation's Major Research Equipment and Facilities Construction (MREFC) account. The ARRV is one of NSF's MREFC projects. Section 1605(a) of the Recovery Act, the Buy American provision, states that none of the funds appropriated by the Act ''may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.''

The ARRV has been developed under a cooperative agreement awarded to the University of Alaska, Fairbanks (UAF) that began in 2007. UAF executed the shipyard contract in December 2009 and the project is currently under construction. The purpose of the Recovery Act is to stimulate economic recovery in part by funding current construction projects like the ARRV that are ''shovel ready'' without requiring projects to revise their standards and specifications, or to restart the bidding process.

Subsections 1605(b) and (c) of the Recovery Act authorize the head of a Federal department or agency to waive the Buy American provision if the head of the agency finds that: (1) Applying the provision would be inconsistent with the public interest; (2) the relevant goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent. If the head of the Federal department or agency waives the Buy American provision, then the head of the department or agency is required to publish a detailed justification in the **Federal Register**.

Finally, section 1605(d) of the Recovery Act states that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

NSF has previously granted exemptions for purchase of the bow thruster [75 FR 9256 (March 1, 2010)], anti-roll tank control system [76 FR 184 (January 3, 2011)], weather fax [76 FR 186 (January 3, 2011)], ultrasonic antifouling system [76 FR 35920 (June 20, 2011)], and HVAC generators [76 FR 35919 (June 20, 2011)]; all of which were in excess of this $10,000 de minimus waiver and not produced in the United States in sufficient and reasonably available commercial quantities.

II. Finding That Individual Exemptions for Incidental Items Are Not in the Public Interest

Ship construction projects typically involve the use of literally hundreds of miscellaneous, generally low-cost items that are essential for, but incidental to, the construction of the vessel. These items are permanently incorporated into the physical structure and connected to other sub-systems in the ship and include such things as galley appliances, stateroom furnishings,

fixtures, and electronic equipment. For many of these incidental items, U.S. manufactured alternatives are not always readily or reasonably available. The miscellaneous character of these manufactured goods, together with their low individual cost, characterize them as items incidental to the project. Requiring individual exemptions for low cost, incidental items would be time prohibitive and overly burdensome for the awardee (University of Alaska, Fairbanks), subcontractor (shipyard) and for NSF. Such a de minimis exemption allows the award recipients to focus their efforts on the major manufactured goods within the ARRV project. The terms and conditions of the award still require UAF to Buy American to the extent practicable for items less than $10,000. Therefore, a limited project-specific de minimis exemption for any such incidental item costing $10,000 or less used in and incorporated into the ARRV project is justified in the public interest. The Department of Energy has issued a similar type of de minimis exemption, relating to its Office of Energy Efficiency and Renewable Energy [75 FR 35447 (June 22, 2010)].

At this phase in the ARRV project, it is estimated that only $750,000 of incidental items will require use of the de minimis exemption. To ensure proper oversight with regard to use of this exemption within the project, the agency hereby establishes an allowable ceiling of $1.5M for the application of this de minimis exemption; this represents approximately 2.5% of the total value of materials used in the vessel. (Since the previously-granted exemptions for the purchase of ARRV equipment were not granted on this de minimis basis, but instead because there was not a domestic manufacturer of the qualifying equipment, those purchases do not fall within the $1.5M ceiling for the use of this de minimis exemption.)

Issuance of this limited project-specific exemption recognizes NSF's commitment to expeditious spending of Recovery Act dollars balanced against the need for efficient implementation of the Recovery Act provision while still maintaining the Buy American requirements for manufactured goods that are greater than the de minimis amount of $10,000.

III. Exemption

On July 6, 2011, and under the authority of section 1605(b)(1) of the Public Law 111–5 and delegation order dated 27 May 2010, with respect to the Alaska Region Research Vessel Project funded by NSF, the NSF Chief Financial Officer granted a limited project exemption for any incidental item costing $10,000 or less used in and incorporated into the project. With this exemption, the agency hereby establishes a $1.5M ceiling for the total allowable value of de minimis exemptions used on this project.

Dated: July 7, 2011.

Lawrence Rudolph,

General Counsel.

[FR Doc. 2011–18643 Filed 7–25–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0167]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 30, 2011 to July 13, 2011. The last biweekly notice was published on July 12, 2011 (76 FR 40937).

ADDRESSES: Please include Docket ID NRC–2011–0167 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–NRC–2011–0167. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* 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, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are accessible electronically through ADAMS 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–2011–0167.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or

consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System

requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: June 10, 2011.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to add a new limiting condition for operation (LCO) Applicability requirement, LCO 3.0.9, and its associated Bases, relating to the modification of requirements regarding the impact of unavailable barriers, not explicitly addressed in TSs, but required for operability of supported systems in TSs. This change is consistent with NRC-approved Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler, TSTF–427, Revision 2, ''Allowance for Non Technical Specification Barrier Degradation on Supported System OPERABILITY.''

The NRC staff issued a Notice of Opportunity to Comment in the **Federal Register** on June 2, 2006 (71 FR 32145), on possible amendments to revise the plant-specific TSs, including a model safety evaluation and model no significant hazards consideration determination using the consolidated line item improvement process. The NRC staff subsequently issued a Notice of Availability of this TS improvement in the **Federal Register** on October 3, 2006 (71 FR 58444). The licensee affirmed the applicability of the model no significant hazards consideration

determination in its application dated June 10, 2011.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an unavailable barrier if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on the allowance provided by proposed LCO 3.0.9 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.9. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to an unavailable barrier, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in [NRC Regulatory Guide (RG) 1.177, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications'']. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.9 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant as indicated by the anticipated low levels of associated risk (ICCDP [incremental conditional core damage probability] and ICLERP [incremental conditional large early release probability]) as shown in Table 1 of Section 3.1.1 in the Safety Evaluation. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

NextEra Energy Point Beach, LLC (NextEra, the Licensee), Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowac County, Wisconsin

Date of amendment request: June 23, 2011.

Description of amendment request: The proposed amendment will remove the Table of Contents from the Technical Specifications and place it under licensee control. The Table of Contents (TOCs) for the Technical Specifications (TSs) is not being eliminated. The responsibility for maintenance and issuance of updates to the TOCs will transfer from the U.S. Nuclear Regulatory Commission (NRC) to the licensee. The TOCs will no longer be included in the TSs and, as such, will no longer be part of Appendix A to the Operating License.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment is administrative and affects control of a document, the TOCs, listing the specifications in the plant TSs. Transferring control from the NRC to NextEra does not affect the operation, physical configuration, or function of plant equipment or systems. The proposed amendment does not impact the initiators or assumptions of analyzed events, nor does it impact the mitigation of accidents or transient events.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment is administrative and does not alter plant configuration, require installation of new equipment, alter assumptions about previously analyzed accidents, or impact operation or function of plant equipment or systems.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment is administrative. The TOCs is not required by regulation to be in the TSs. Removal does not impact any safety assumptions or have the potential to reduce a margin of safety. The proposed amendment involves a transfer of control of the TOCs from the NRC to NextEra. No change in the technical content of the TSs is involved. Consequently, transfer from the NRC to NextEra has no impact on the margin of safety.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: William Blair, Senior Attorney, NextEra Energy Point Beach, LLC, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Robert J. Pascarelli.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Unit 1 and 2, Louisa County, Virginia

Date of amendment request: July 19, 2010, as supplemented September 9, 2010, January 26, May 16, and June 23, 2011.

Description of amendment request: Changes are proposed to the Technical Specifications to include an analytical methodology for the critical heat flux correlation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Approval of the proposed changes will allow Dominion to use the VIPRE [Versatile Internals and Components Program for Reactors—EPRI]–DIWRB–2M and VIPRE–DIW–3 code/correlation pairs to perform licensing calculations of Westinghouse RFA–2 fuel in North Anna Cores, using the DDLs [deterministic design limits] documented in Appendix C of the DOM–NAF–2–A Fleet Report and the SDL [statistical design limit] documented herein. Neither the code/correlation pair nor the Statistical Departure from Nucleate Boiling Ratio (DNBR) Evaluation Methodology affect accident initiators and thus cannot increase the probability of any accident. Further, since both the deterministic and statistical DNBR limits meet the required design basis of avoiding Departure from Nucleate Boiling (DNB) with 95% probability at a 95% confidence level, the use of the new code/correlation and Statistical DNBR Evaluation Methodology do not increase the potential consequences of any accident. Finally, the full core DNB design limit provides increased assurance that the consequences of a postulated accident which includes radioactive release would be minimized because the overall number of rods in DNB would not exceed the 0.1% level. The pertinent evaluations to be performed as part of the cycle specific reload safety analysis to confirm that the existing safety analyses remain applicable have been performed and determined to be acceptable. The use of a different code/correlation pair will not increase the probability of an accident because plant systems will not be operated in a different manner, and system interfaces will not change. The use of the VIPRE–DIWRB–2M and VIPRE–DIW–3 code/correlation pairs to perform licensing calculations of Westinghouse RFA–2 fuel in North Anna cores will not result in a measurable impact on normal operating plant releases and will not increase the predicted radiological consequences of accidents postulated in the UFSAR [Updated Final Safety Analysis Report].

Therefore, neither the probability of occurrence nor the consequences of any accident previously evaluated is significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The use of VIPRE–D/WRB–2M and the VIPRE–D/W–3 code/correlation pairs and the applicable fuel design limits for DNBR does not impact any of the applicable design criteria and the licensing basis criteria will continue to be met. Demonstrated adherence to these standards and criteria precludes new challenges to components and systems that could introduce a new type of accident. Setpoint safety analysis evaluations have demonstrated that the use of VIPRE–D/WRB–2M and VIPRE–D/W3 is acceptable. Design and performance criteria will continue to be met and no new single failure mechanisms will be created. The use of the VIPRE–D/WRB–2M and VIPRE–D/W–3 code/correlation pairs and the Statistical DNBR Evaluation Methodology does not involve any alteration to plant equipment or procedures that would introduce any new or unique operational modes or accident precursors. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Response: No.

Approval of the proposed changes will allow Dominion to use the VIPRE–D/WRB–2M and VIPRE–D/W–3 code/correlation pairs to perform licensing calculations of Westinghouse RFA–2 fuel in North Anna cores, using the DDLs documented in Appendix C of the DOM–NAF–2–A Fleet Report and the SDL documented herein. The SDL has been developed in accordance with the Statistical DNBR Evaluation Methodology. North Anna TS 2.1, ''Safety Limits,'' specifies that any DNBR limit established by any code/correlation must provide at least 95% non-DNB probability at a 95% confidence level. The DNBR limits meet the design basis of avoiding DNB with 95% probability at a 95% confidence level. The required DNBR margin of safety for North Anna Power Station, which in this case is the margin between the 95/95 DNBR limit and clad failure, is therefore not reduced.

Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Gloria Kulesa.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: August 27, 2010, as supplemented by letters dated February 11 and May 25, 2011.

Brief description of amendment request: The proposed amendment would revise the feedwater line break with loss of offsite power and single failure (FWLB/LOP/SF) analysis summarized in the Palo Verde Nuclear Generating Station Updated Safety Analysis Report. The revision would change the credited operator action to 20 minutes from 30 minutes to control the pressurizer level. The revision would also revise the rate of reactor coolant pump (RCP) bleed-off to the reactor drain tank from three gallons per minute to zero.

Date of publication of individual notice in ***Federal Register:*** June 28, 2011 (76 FR 37853).

Expiration date of individual notice: July 28, 2011, for comments and August 29, 2011, for hearings.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the

Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois; Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit 1 and 2, Ogle County, Illinois

Date of application for amendment: June 29, 2010, as supplemented on August 24, 2010, and January 13, 2011.

Brief description of amendment: The license amendments revise Technical Specifications (TS) Section 3.4.12, ''Low Temperature Overpressure Protection (LTOP) System,'' to correct an inconsistency between the TS, and implementation of procedures and administrative controls for Safety Injection pumps required to mitigate a postulated loss of decay heat removal during mid-loop operation as discussed in NRC Generic Letter 88–17, ''Loss of Decay Heat Removal.''

Date of issuance: June 29, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 167, 167, 174, 174.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revise the TSs and license.

Date of initial notice in Federal Register: October 5, 2010 (75 FR 61526). The August 24, 2010, and January 13, 2011, supplements contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a safety evaluation dated June 29, 2011.

No significant hazards consideration comments received: No.

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

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–18525 Filed 7–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33305; License No. 25–10994–04; EA–10–258; NRC–2011–0163]

In the Matter of Bozeman Deaconess Foundation, dba Bozeman Deaconess Hospital, Bozeman, MT; Confirmatory Order Modifying License; (Effective Immediately)

I

Bozeman Deaconess Hospital (Licensee) is the holder of Materials License No. 25–10994–04 issued by the Nuclear Regulatory Commission (NRC or the Commission) pursuant to Title 10 of the Code of Federal Regulations (10 CFR) parts 30 and 35. The license authorizes the operation of the Licensee's facility in accordance with the conditions specified therein, at 915 Highland Boulevard, Bozeman, Montana.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on May 25, 2011, at the NRC Region IV offices in Arlington, Texas.

II

On January 27, 2010, the NRC conducted a routine unannounced inspection of the Bozeman Deaconess Hospital facility to evaluate radiation safety and security, as well as compliance with Commission rules and regulations and the conditions of the license. During the inspection, it was determined that an employee of Bozeman Deaconess Hospital failed to secure radioactive materials from unauthorized access or removal from the facility's nuclear medicine laboratory (hot lab). On March 8, 2010, the NRC Office of Investigations (OI), Region IV, began an investigation (OI Case No. 4–2010–033) to determine whether employees from Bozeman Deaconess Hospital willfully failed to secure radioactive material during periods when authorized personnel were absent from the hot lab. Based on the results of the inspection and the evidence developed during the investigation, the NRC identified two apparent violations. The first apparent violation involved a willful failure to secure licensed materials from unauthorized removal or access as required by 10 CFR 20.1801. The second violation involved a failure to control and maintain constant surveillance of licensed material as required by 10 CFR 20.1802.

By letter dated April 12, 2011, the NRC transmitted the results of the inspection and a factual summary of OI's Investigation Report 4–2010–033 to Bozeman Deaconess Hospital. In the April 12 letter, the NRC informed the Licensee that the NRC was considering escalated enforcement action for the apparent violations. The NRC offered the Licensee the opportunity to request a predecisional enforcement conference or request ADR with the NRC in an attempt to resolve issues associated with this matter. In response, on April 21, 2011, Bozeman Deaconess Hospital requested ADR to resolve this matter with the NRC.

On May 25, 2011, the NRC and Licensee representatives met in an ADR session with a professional mediator, arranged through the Cornell University Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This

Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, the Licensee requested use of the NRC's ADR process to resolve differences it had with the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

Pursuant to the NRC's ADR program, the following are the terms and conditions agreed upon in principle by Bozeman Deaconess Hospital (the hospital) and the NRC relating to the NRC Inspection Report 030–33305/2010–001 (and Investigation Report No.4–2010–033) dated April 12, 2011.

Whereas, the NRC identified an apparent violation of 10 CFR 20.1801 and 20.1802 in that a nuclear medicine technician deliberately failed to secure the nuclear medicine door during periods when hospital staff were not available to secure radioactive materials from unauthorized access and/or removal;

Whereas, the NRC identified instances of willfulness where hospital employees raised a concern about the nuclear medicine technician's failures to secure the nuclear medicine door, yet hospital managers did not adequately address the concern and as a result, the violation had been occurring for approximately 10 years;

Whereas, the NRC identified instances in which the hospital's radiation safety officer also raised the concern to a hospital manager, yet hospital management failed to adequately address the concern and failed to prevent the violation from recurring;

Whereas, the NRC identified that the hospital's former radiation safety officer stated he had no knowledge of NRC regulations that required the nuclear medicine door to be secure in order to prevent the removal and/or access to radioactive material, and the former radiation safety officer did not attempt to become familiar with NRC requirements in order to meet his responsibilities as defined in 10 CFR 35.24;

Whereas, the NRC is interested in obtaining comprehensive corrective actions by the hospital that would prevent future failures to secure licensed material; and any future willful violations;

Whereas, the NRC is interested in obtaining comprehensive corrective actions that ensure hospital staff and managers understand NRC regulations and the conditions of the license;

Whereas, the NRC is interested in obtaining comprehensive corrective actions to ensure that hospital workers understand their obligations to follow NRC requirements and to raise safety concerns to hospital management;

Whereas the NRC is interested in ensuring that hospital managers understand their obligations to follow NRC requirements and their obligations to review and act on any concerns raised to them by hospital staff;

Whereas, the NRC is interested in obtaining comprehensive corrective actions by hospital management to ensure that the hospital selects radiation safety officers who understand NRC regulations and the license conditions, and who understand their responsibilities under 10 CFR 35.24;

Whereas, these terms and conditions shall not be binding on either party until memorialized in a confirmatory order issued by the NRC to the hospital relating to this matter.

Therefore, the parties agree to the following terms and conditions:

1. Within 45 days of the date of this Confirmatory Order, the Licensee shall submit a license amendment request and provide its procedure to comply with 10 CFR 20.1801 and 20.1802.

2. Within 30 days from the date of this confirmatory order, the Licensee must contract with an independent third-party organization to provide training to hospital staff and managers who are required to receive training under 10 CFR 19.12 on: (1) What constitutes deliberate misconduct under NRC regulations at 10 CFR 30.10, (2) the range of enforcement actions that the NRC has taken against individuals and licensees who engaged in deliberate misconduct, and (3) the definitions of willfulness and careless disregard contained in the NRC Enforcement Policy. The NRC Enforcement Policy (ADAMS Accession No. ML093480037) and examples of significant NRC enforcement actions are found at *http://www.nrc.gov/about-nrc/regulatory/enforcement/current.html.* At least 14 days prior to commencing the training, the Licensee must submit the name and resume of the independent third-party individual who will be providing this training to the Director, Division of Nuclear Material Safety; 612 E. Lamar Blvd., Arlington, TX 76011. The training must be completed within 90 days of the date of this Confirmatory Order.

3. The Licensee must contract with an independent third-party organization to provide training to hospital staff and managers who are required to receive training under 10 CFR 19.12 on the following topics:

A. The model training program in Appendix J to NUREG 1556, Volume 9, Revision 2; and

B. An overview of 10 CFR 19.16 and 10 CFR 30.7.

The extent of this training must be commensurate with potential radiological health protection problems present in the work place. In addition, the Licensee must develop a mechanism to assess the effectiveness of the training that was conducted. At least 14 days prior to commencing the training, the Licensee must submit the name and resume of the independent third-party individual who will be providing this training to the Director, Division of Nuclear Materials Safety; 612 E. Lamar Blvd., Arlington, TX 76011. The training must be completed within 90 days of the date of this Confirmatory Order.

4. The hospital shall modify its internal requirements for new worker training and for its annual refresher training to require that the topics presented in Conditions 2 and 3 be made part of the training. Training in these areas may be provided by qualified hospital staff, and is required for managers and staff who are required to receive training under 10 CFR 19.12. The training requirements must include a mechanism to assess the effectiveness of the training. This training must be commensurate with the potential radiological health protection issues present in the work place. Within 45 days of the date of this Confirmatory Order, the Licensee must submit to the NRC a license amendment request to incorporate these requirements for new worker training and annual refresher training.

5. Within 30 days of the date of this Confirmatory Order, the Licensee must develop a procedure which assesses, during the selection process for radiation safety officers, the person's understanding of 10 CFR parts 19, 20, and 35. Within 45 days of the date of this Confirmatory Order, the Licensee shall submit a license amendment request to have the procedure incorporated into its NRC license.

6. Within 30 days of the date of this Confirmatory Order, the Licensee must develop and implement a procedure that allows hospital employees and contractors to raise radiation safety concerns to hospital management. The procedure must: (a) Accommodate anonymous concerns and must maintain the anonymity of the individual; (b) describe the reviews to be conducted by hospital management; and (c) describe when the radiation safety committee will review and resolve employee safety concerns. The procedure must describe the Licensee's process for reviewing and

approving changes to this procedure. The Licensee is authorized to make changes to this procedure without prior Commission approval as long as: (a) The proposed revision is documented, reviewed, and approved by the Licensee's radiation safety committee; (b) the revised procedure is in accordance with regulatory requirements; (c) the Licensee's staff is trained in the revised procedure prior to its implementation; and (d) the Licensee's audit program evaluates the effectiveness of the change and its implementation. Within 45 days of the date of this Confirmatory Order, the Licensee must submit a license amendment request, which requires that the Licensee maintain such a procedure.

7. Between 12–15 months from the date of this Confirmatory Order, the Licensee shall perform an assessment of the effectiveness of the training provided in Conditions 2 and 3. The results of its assessment shall be maintained by the Licensee for 3 years and shall be available for the NRC to review.

8. The Licensee agrees to pay a civil penalty of $3,500 within 30 days of the date of this Confirmatory Order.

On July 1, 2011, the Licensee consented to issuing this Order with the commitments, as described in Section V below. The Licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the Licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that the Licensee's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 20, 30, and 35, *It is hereby ordered, effective immediately, that License No. 25–10994–04 is modified as follows:*

1. Within 45 days of the date of this Confirmatory Order, the Licensee shall submit a license amendment request and provide its procedure to comply with 10 CFR 20.1801 and 20.1802.

2. Within 30 days from the date of this Confirmatory Order, the Licensee must contract with an independent third-party organization to provide training to hospital staff and managers who are required to receive training under 10 CFR 19.12 on the following topics:

A. What constitutes deliberate misconduct under NRC regulations at 10 CFR 30.10;

B. The range of enforcement actions that the NRC has taken against individuals and licensees who engaged in deliberate misconduct.

C. The definitions of willfulness and careless disregard contained in the NRC Enforcement Policy (ADAMS Accession No. ML093480037).

The NRC Enforcement Policy (ADAMS Accession No.ML093480037) and examples of significant NRC enforcement actions are found at *http://www.nrc.gov/about-nrc/regulatory/enforcement/current.html.* At least 14 days prior to commencing the training, the Licensee must submit the name and resume of the independent third-party individual who will be providing this training to the Director, Division of Nuclear Materials Safety; 612 E. Lamar Blvd., Arlington, TX 76011. The training must be completed within 90 days of the date of this Confirmatory Order.

3. The Licensee must contract with an independent third-party organization to provide training to hospital staff and managers who are required to receive training under 10 CFR 19.12 on the following topics:

A. The Model Training Program in Appendix J to NUREG 1556, Volume 9, Revision 2; and

B. An overview of 10 CFR 19.16 and 10 CFR 30.7.

The extent of this training must be commensurate with potential radiological health protection problems present in the workplace. In addition, the Licensee must develop a mechanism to assess the effectiveness of the training that was conducted. At least 14 days prior to commencing the training, the Licensee must submit the name and resume of the independent third-party individual who will be providing this training to the Director, Division of Nuclear Materials Safety; 612 E. Lamar Blvd., Arlington, TX 76011. The training must be completed within 90 days of the date of this Confirmatory Order.

4. The Licensee shall modify its internal requirements for new worker training and for its annual refresher training to require that the topics presented in Conditions 2 and 3 be made part of the training. Training in these areas may be provided by qualified hospital staff, and is required for managers and staff who are required to receive training under 10 CFR 19.12. The training requirements must include a mechanism to assess the effectiveness of the training. This training must be commensurate with the potential radiological health protection issues present in the workplace. Within 45 days of the date of this Confirmatory Order, the Licensee must submit to the NRC a license amendment request to incorporate these requirements for new worker training and annual refresher training.

5. Within 30 days of the date of this Confirmatory Order, the Licensee must develop a procedure which assesses, during the selection process for radiation safety officers, the person's understanding of 10 CFR parts 19, 20, and 35. Within 45 days of the date of this Confirmatory Order, the Licensee shall submit a license amendment request to have the procedure incorporated into its NRC license.

6. Within 30 days of the date of this Confirmatory Order, the Licensee must develop and implement a procedure that allows hospital employees and contractors to raise radiation safety concerns to hospital management. The procedure must: (a) Accommodate anonymous concerns and must maintain the anonymity of the individual; (b) describe the reviews to be conducted by hospital management; and (c) describe when the radiation safety committee will review and resolve employee safety concerns. The procedure must describe the Licensee's process for reviewing and approving changes to this procedure. The Licensee is authorized to make changes to this procedure without prior Commission approval as long as: (a) The proposed revision is documented, reviewed, and approved by the Licensee's radiation safety committee; (b) the revised procedure is in accordance with regulatory requirements; (c) the Licensee's staff is trained in the revised procedure prior to its implementation; and (d) the Licensee's audit program evaluates the effectiveness of the change and its implementation. Within 45 days of the date of this Confirmatory Order, the Licensee must submit a license amendment request, which requires that the Licensee maintain such a procedure.

7. Between 12 and 15 months from the date of this Confirmatory Order, the Licensee shall perform an assessment of the effectiveness of the training provided in Conditions 2 and 3. The results of its assessment shall be

maintained by the Licensee for 3 years and shall be available for the NRC to review.

8. The Licensee agrees to pay a civil penalty of $3,500 within 30 days of the date of this Confirmatory Order. The Licensee must pay the civil penalty, in accordance with NUREG/BR–0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, a statement indicating when and by what method payment was made.

The Regional Administrator, NRC Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. 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 the Electronic Information Exchange (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.

If a person (other than the Licensee) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 8th day of July 2011.

For the Nuclear Regulatory Commission.

Elmo E. Collins,

Administrator, NRC Region IV.

[FR Doc. 2011–18853 Filed 7–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–12–COL and 52–13–COL; ASLBP No. 09–885–08–COL–BD01]

Atomic Safety and Licensing Board; In the Matter of Nuclear Innovation North America LLC (South Texas Project Units 3 and 4); Notice of Hearing; Opportunity To Submit Written Limited Appearance Statements; and Notice of Oral Argument

July 7, 2011.

Before Administrative Judges: Michael M. Gibson, Chairman, Dr. Gary S. Arnold, Dr. Randall J. Charbeneau.

The Atomic Safety and Licensing Board hereby gives notice that it will convene an evidentiary hearing to receive testimony and exhibits in the contested portion of this proceeding regarding the application of Nuclear Innovation North America LLC (NINA) for combined licenses that would authorize NINA to construct and operate two new nuclear reactor units on an existing site near Bay City, Texas. In addition, the Board gives notice that, in accordance with 10 CFR 2.315(a), it will entertain written limited appearance statements from members of the public in connection with this proceeding. Finally, the Board gives notice that it will hold oral argument on a new contention proposed by Intervenors [1] related to foreign control.

A. Matters To Be Considered at Evidentiary Hearing

This evidentiary hearing will concern two environmental contentions: one related to estimating replacement power costs in the evaluation of severe accident mitigation design alternatives, the other related to accounting for energy efficient building code rules in the assessment of a need for power.

B. Date, Time, and Location of Evidentiary Hearing

The Board will conduct this evidentiary hearing [2] beginning at 9:30 a.m., Central Daylight Time (CDT) on Thursday, August 18, 2011, at the Campus of the Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin, TX 78753. The hearing will continue day-to-day until concluded.

Any members of the public who plan to attend the evidentiary hearing are advised that security measures will be employed at the entrance to the facility, including searches of hand-carried items such as briefcases or backpacks.

C. Submitting Written Limited Appearance Statements

As provided in 10 CFR 2.315(a), any person (other than a party or the representative of a party to this proceeding) may submit a written statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board or the parties in their consideration of the issues in this proceeding.

A written limited appearance statement may be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–1101 (verification (301) 415–1966).

E-mail: hearingdocket@nrc.gov.

In addition, using the same method of service, a copy of the written limited appearance statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Administrative Judge Michael M. Gibson, Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–5599 (verification (301) 415–7332).

E-mail: Michael.Gibson@nrc.gov and *Jonathan.Eser@nrc.gov.*

D. Notice of Oral Argument

The Board will hold oral argument on Intervenors' newly proffered foreign control contention beginning at 9:30 a.m. CDT on Wednesday, August 17, 2011, at the Campus of the Texas Commission on Environmental Quality, Building F, Room 2210, 12100 Park 35 Circle, Austin, TX 78753. As with hearing attendance, members of the public are welcome to attend oral argument, subject to facility security protocol.

E. Availability of Documentary Information Regarding the Proceeding

NINA's application and various Staff documents relating to the application are available on the NRC Web site at *http://www.nrc.gov/reactors/new-reactors/col/south-texas-project.html.*

These and other documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD 20852, or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at (800) 397–4209 or (301) 415–4737 (available

[1] Intervenors are the Sustainable Energy and Economic Development Coalition, the South Texas Association for Responsible Energy, and Public Citizen.

[2] NINA, NRC Staff and Intervenors will be parties to the hearing and will present witnesses and evidentiary material.

between 8 a.m. and 4 p.m., Eastern Time (ET), Monday through Friday except federal holidays), or by e-mail to *pdr@nrc.gov.*

It is so ordered.

Dated: July 7, 2011.

For the Atomic Safety and Licensing Board.

Michael M. Gibson,

Administrative Judge, Rockville, Maryland.

[FR Doc. 2011–18826 Filed 7–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0166]

Exelon Generation Co., LLC; Notice of Receipt and Availability of Application for Renewal of Limerick Generating Station, Units 1 and 2 Facility Operating License Nos. NPF–39 and NPF–85 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated June 22, 2011, from Exelon Generation Co., LLC, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Title 10 of the Code of Federal Regulations part 54 (10 CFR part 54), to renew the operating licenses for the Limerick Generating Station (LGS), Units 1 and 2. Renewal of the licenses would authorize the applicant to operate each facility for an additional 20-year period beyond the period specified in the respective current operating licenses. The current operating license for LGS, Unit 1 (NPF–39), expires on October 26, 2024. The current operating license for LGS, Unit 2 (NPF–85), expires on June 22, 2029. Both units are boiling-water reactors designed by General Electric, and are located 4 miles from Limerick, PA. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the Commission's public document room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 or through the internet from the NRC's Agencywide Documents Access and Management System (ADAMS) public electronic reading room under Accession Number ML111790800. The ADAMS public electronic reading room is available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*. Persons who do not have access to the internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, extension 4737, or by e-mail to *pdr.resource@nrc.gov*.

A copy of the license renewal application for the LGS, Units 1 and 2, is also available to local residents near the site at the Pottstown Regional Public Library, 500 East High Street, Pottstown, PA 19464–5656.

Dated at Rockville, Maryland, this 13th day of July 2011.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–18394 Filed 7–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC–2011–0006].

DATE: Weeks of July 25, August 1, 8, 15, 22, 29, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 25, 2011

Thursday, July 28, 2011

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)

Final Rule: Definition of Construction in 10 CFR Parts 30, 36, 39, 40, 51, 70, and 150 (Tentative).

This meeting will be Web cast live at the Web address *http://www.nrc.gov.*

9 a.m. Briefing on Severe Accidents and Options for Proceeding with Level 3 Probabilistic Risk Assessment Activities (Public Meeting); (Contact: Daniel Hudson, 301–251–7919).

This meeting will be Web cast live at the Web address *http://www.nrc.gov.*

Week of August 1, 2011—Tentative

There are no meetings scheduled for the week of August 1, 2011.

Week of August 8, 2011—Tentative

There are no meetings scheduled for the week of August 8, 2011.

Week of August 15, 2011—Tentative

There are no meetings scheduled for the week of August 15, 2011.

Week of August 22, 2011—Tentative

There are no meetings scheduled for the week of August 22, 2011.

Week of August 29, 2011—Tentative

Tuesday, August 30, 2011

9 a.m. Information Briefing on Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) Related Activities (Public Meeting) (Contact: Aida Rivera-Varona, 301–251–4001).

This meeting will be Web cast live at the Web address *http://www.nrc.gov.*

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording) (301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: July 21, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–18942 Filed 7–22–11; 11:15 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request Under OMB Review

AGENCY: Peace Corps.

ACTION: Correction notice.

SUMMARY: The Peace Corps published a document in the **Federal Register** of July 11, 2011, [FR Doc. 2011–17273, pages 40755–40756], concerning request for comments on an information collection. This document corrects errors in that notice.

FOR FURTHER INFORMATION CONTACT: Denora Miller can be contacted by telephone at 202–692–1236 or e-mail at *pcfr@peacecorps.gov.*

Correction

On page 40756, in the first column, line four, should read:

''The Peace Corps invites the general public to comment on a proposed revision of a currently approved collection, Peace Corps Volunteer Application (OMB Control Number 0420–0005).''

On page 40756, in the first column, under the heading **SUPPLEMENTARY INFORMATION** (3) should read:

''*Type of Review:* Revision of a currently approved collection.''

Dated: July 19, 2011.

Earl W. Yates,

Associate Director, Management.

[FR Doc. 2011–18804 Filed 7–25–11; 8:45 am]

BILLING CODE 6051–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29729; File No. 812–13863]

Northern Lights Variable Trust, et al.; Notice of Application

July 19, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act or Act''), seeking exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: Northern Lights Variable Trust (the ''Fund'') and Gemini Fund Services, LLC (''Gemini'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants request an order pursuant to Section 6(c) of the 1940 Act to permit shares of an existing portfolio of the Fund and shares of any future investment company (''Shares'') that is designed to fund VA Accounts and/or VLI Accounts (as defined below) and for which Gemini or any of its affiliates may serve in the future as investment adviser, sub-adviser, manager, administrator, principal underwriter or sponsor (''Insurance Fund'' and collectively with the Fund, ''Insurance Funds'') to be sold and held by: (i) Separate accounts registered as investment companies or separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act that fund variable annuity contracts (''VA Accounts'') and variable life insurance contracts (''VLI Accounts'') (VA Accounts and VLI Accounts together ''Separate Accounts'') issued by both affiliated life insurance companies and unaffiliated life insurance companies (''Participating Insurance Companies''); (ii) trustees of qualified group pension and group retirement plans outside of the Separate Account context (''Qualified Plans''); (iii) investment adviser(s) or affiliated person(s) of the investment adviser(s) to a series of an Insurance Fund (the ''Adviser''), for the purpose of providing seed capital to a series of an Insurance Fund; and (iv) general accounts of insurance company depositors of VA Accounts and/or VLI Accounts (''General Accounts'').

DATES: *Filing Date:* The application was filed on January 25, 2011, and amended and restated on July 15, 2011.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 15, 2011, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Northern Lights Variable Trust, c/o Emile Molineaux, Esquire, Gemini Fund Services, LLC, 450 Wireless Boulevard, Hauppage, New York 11788–0132, copies to JoAnn Strasser, Esquire, Thompson Hine LLP, 312 Walnut Street, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Michelle Roberts, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search.htm*, or by calling (202) 551–8090.

Applicants' Representations

1. The Fund was organized as a Delaware statutory trust on November 2, 2005 and is registered under the 1940 Act as an open-end management investment company (File No. 811–21853). The Fund is a series investment company as defined by Rule 18f–2 under the 1940 Act and is currently comprised of fourteen portfolios managed by seven different investment advisers and three subadvisers. The portfolios share a single Board of Trustees (''Board'') and service providers for example, auditors and fund counsel. The investment advisers are not affiliated with Gemini and may or may not be affiliated with each other.

2. Shares of the portfolios will not be sold to the general public, but will be offered to Separate Accounts of a Participating Insurance Company, Qualified Plans, the Adviser for seed money and General Accounts.

3. Gemini provides administrative, fund accounting and transfer agent services to the portfolios, subject to the supervision of the Board. Gemini may provide individuals to serve as officers of the Insurance Funds, which officers may be directors, officers or employees of Gemini or its affiliates. Gemini is paid a fee for its services, which may consist of a base fee, a per account fee and/or an asset-based fee.

4. The Insurance Funds may offer their Shares to Separate Accounts of Participating Insurance Companies to serve as an investment medium to support variable life insurance contracts (''VLI Contracts'') and variable annuity contracts (''VA Contracts'') (together, ''Variable Contracts'') issued through such accounts. If a Separate Account is registered as an investment company under the 1940 Act, or is exempt from such registration under Section 3(c) of the 1940 Act, it will be a ''separate account'' as defined by Rule 0–1(e) (or any successor rule) under the 1940 Act. For purposes of the Act, the Participating Insurance Company that

establishes such a Separate Account is the depositor and sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

5. As described more fully below, the Insurance Funds will sell Shares to Separate Accounts only if each Participating Insurance Company sponsoring such a Separate Account enters into a participation agreement (a ''Participation Agreement'') with such Insurance Fund. The Participation Agreement will govern participation by the Participating Insurance Company in such Insurance Fund and will memorialize, among other matters, the fact that the Participating Insurance Company will remain responsible for establishing and maintaining any Separate Account covered by the Participation Agreement and for complying with all applicable requirements of state and federal law pertaining to such accounts and to the sale and distribution of variable contracts issued through such accounts. The role of the Insurance Funds under this arrangement insofar as federal securities laws are applicable, will consist of offering Shares to the Separate Accounts and fulfilling any conditions that the Commission may impose upon granting the order.

6. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI Accounts and VA Accounts of the same Participating Insurance Company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as ''mixed funding.'' The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts and/or VA Accounts of two or more Participating Insurance Companies that are not affiliated persons of each other, is referred to herein as ''shared funding.''

7. Applicants propose that the Insurance Funds be permitted to offer and sell Shares to Qualified Plans administered by a trustee. Federal tax law permits investment companies to increase their net assets by selling shares to Qualified Plans.

8. Qualified Plans may invest in shares of an investment company as the sole investment under the Qualified Plan, or as one of several investments. Qualified Plan participants may or may not be given an investment choice depending on the terms of the Qualified Plan itself. The trustees or other fiduciaries of a Qualified Plan may vote investment company shares held by the Qualified Plan in their own discretion or, if the applicable Qualified Plan so provides, vote such shares in accordance with instructions from participants in such Qualified Plans. Applicants have no control over whether trustees or other fiduciaries of Qualified Plans, rather than participants in the Qualified Plans, have the right to vote under any particular Qualified Plan. Each Qualified Plan must be administered in accordance with the terms of the Qualified Plan and as determined by its trustee or trustees.

9. Applicants propose that the Insurance Funds may also sell Shares to its Adviser for the purpose of providing seed capital to a portfolio. The Treasury Regulations permit such sales as long as the return on shares held by the adviser or an affiliate is computed in the same manner as shares held by Separate Accounts, the adviser or an affiliate does not intend to sell the shares to the public, and sales to an investment adviser or affiliate are only made in connection with the creation of a series of an investment company. Applicants propose that the Insurance Funds also be permitted to offer and/or sell Shares to the General Accounts of Participating Insurance Companies. The Treasury regulations permit sales to general accounts as long as the return on shares held by general accounts is computed in the same manner as for shares held by Separate Accounts and the Participating Insurance Company does not intend to sell the shares to the public.

10. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts, VA Accounts, investment advisers, a General Account and Qualified Plans is referred to herein as ''extended mixed funding.''

Applicants' Legal Analysis

1. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any investment company, including a unit investment trust, if an affiliated person of that company is subject to disqualification enumerated in Section 9(a)(1) or (2) of the Act. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares.

2. Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI Accounts organized as unit investment trusts (''UITs'') supporting scheduled premium VLI Contracts and to their life insurance company depositors. The exemptions granted by the Rule are available, however, only where a fund offers its shares exclusively to VLI Accounts of the same Participating Insurance Company and/or of Participating Insurance Companies that are affiliated persons of the same Participating Insurance Company and then, only where scheduled premium VLI Contracts are issued through such VLI Accounts. Therefore, VLI Accounts, their depositors and their principal underwriters may not rely on the exemptions provided by Rule 6e–2(b)(15) if shares of a portfolio are held by a VLI Account through which flexible premium VLI Contracts are issued, a VLI Account of an unaffiliated Participating Insurance Company, an unaffiliated investment adviser, any VA Account or a Qualified Plan. In other words, Rule 6e–2(b)(15) does not provide exemptions when a scheduled premium VLI Account invests in shares of a management investment company that serves as a vehicle for mixed funding, extended mixed funding or shared funding.

3. Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI Accounts organized as UITs supporting flexible premium variable life insurance contracts and their life insurance company depositors. The exemptions granted by the Rule are available, however, only where a fund offers its shares exclusively to VLI Accounts (through which either scheduled premium or flexible premium VLI Contracts are issued) of the same Participating Insurance Company and/or of Participating Insurance Companies that are affiliated persons of the same Participating Insurance Company, VA Accounts of the same Participating Insurance Company or of affiliated Participating Insurance Companies, or the General Account of the same Participating Insurance Company or of affiliated Participating Insurance Companies. Therefore, VLI Accounts, their depositors and their principal underwriters may not rely on the exemptions provided by Rule 6e–3(T)(b)(15) if shares of a portfolio are held by a VLI Account of an unaffiliated Participating Insurance Company, a VA Account of an unaffiliated Participating Insurance Company, an unaffiliated investment adviser, the general account of an unaffiliated Participating Insurance Company, or a Qualified Plan. In other words, Rule 6e–3(T)(b)(15) provides exemptions when a VLI Account supporting flexible premium

VLI Contracts invests in shares of a management investment company that serves as a vehicle for mixed funding but does not provide exemptions when such a VLI Account invests in shares of a management investment company that serves as a vehicle for extended mixed funding or shared funding.

4. As explained below, Applicants maintain that there is no policy reason for the sale of Shares to Qualified Plans to prohibit or otherwise limit a VLI Account and its Participating Insurance Company depositor from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Notwithstanding, Rule 6e–2 and Rule 6e–3(T) each specifically provides that the relief granted thereunder is available only where shares of the underlying fund are offered exclusively to insurance company separate accounts. In this regard, Applicants request exemptive relief in cases where VLI Accounts hold Shares when such Shares are also sold to Qualified Plans.

5. Applicants are not aware of any reason for excluding separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), or for excluding separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Similarly, Applicants are not aware of any reason for excluding Participating Insurance Companies from the exemptive relief requested because the Insurance Funds may also sell their Shares to Qualified Plans. Rather, Applicants assert that the proposed sale of Shares to Qualified Plans, in fact, may allow for the development of larger pools of assets resulting in the potential for greater investment and diversification opportunities, and for decreased expenses at higher asset levels resulting in greater cost efficiencies.

6. For the reasons explained below, Applicants have concluded that investment by Qualified Plans in the Insurance Funds should not increase the risk of material irreconcilable conflicts between owners of VLI Contracts and other types of investors or between owners of VLI Contracts issued by unaffiliated Participating Insurance Companies.

7. Consistent with the Commission's authority under Section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request exemptions for a class consisting of VLI Accounts investing in shares of existing and future portfolios of Insurance Funds, their Participating Insurance Company depositors and their principal underwriters.

8. Section 6(c) of the 1940 Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the exemptions requested are appropriate and in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

9. Section 9(a)(3) of the 1940 Act provides, among other things, that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed funding, extended mixed funding and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying investment company.

10. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person that is disqualified under Sections 9(a)(1) or (2) of the 1940 Act to serve as an officer, director, or employee of the life insurance company, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying investment company. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) under the 1940 Act permits the life insurance company to serve as the underlying investment company's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participates in the management or administration of the investment company.

11. In effect, the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of Section 9 of the Act limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to all individuals in a large insurance complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply Section 9(a) of the 1940 Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Funds as investment vehicles for Separate Accounts. There is no regulatory purpose served in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed funding, extended mixed funding or shared funding. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Insurance Funds. Those individuals who participate in the management of the Insurance Funds will remain the same regardless of which VA Accounts, VLI Accounts, insurance companies, investment advisers, or Qualified Plans invest in the Insurance Funds. Applying the monitoring requirements of Section 9(a) of the 1940 Act because of investment by VLI Accounts and Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by owners of VLI Contracts and Qualified Plan participants. Moreover, Qualified Plans, unlike separate accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of an Insurance Fund except by virtue of its holding 5% or more of an Insurance Fund's shares.

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from pass-through voting requirements with respect to several significant matters, assuming the limitations on mixed funding, extended mixed funding and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its variable life insurance contract owners with respect to the investments of an underlying

investment company, or any contract between such an investment company and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T)).

13. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that an insurance company may disregard the voting instructions of owners of its variable life insurance contracts if such owners initiate any change in an underlying investment company's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B) and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T)).

14. In the case of a change in the investment policies of the underlying investment company, the insurance company, in order to disregard contract owner voting instructions, must make a good faith determination that such a change either would: (1) Violate state law, or (2) result in investments that either (a) would not be consistent with the investment objectives of its separate account, or (b) would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company, or of an affiliated life insurance company with similar investment objectives.

15. Both Rule 6e–2 and Rule 6e–3(T) generally recognize that a variable life insurance contract is primarily a life insurance contract containing many important elements unique to life insurance contracts and is subject to extensive state insurance regulation. In adopting subparagraph (b)(15)(iii) of these Rules, the Commission implicitly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters.

16. The sale of Shares to Qualified Plans or the Adviser will not have any impact on the exemptions requested herein regarding the disregard of pass-through voting rights. Shares sold to Qualified Plans will be held by such Qualified Plans, not insurance companies. The exercise of voting rights by Qualified Plans, whether by trustees, other fiduciaries, participants, beneficiaries, or investment managers engaged by the Qualified Plans, does not raise the type of issues respecting disregard of voting rights that are raised by VLI Accounts. With respect to Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Qualified Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Qualified Plan assets to certain specified persons.

17. If a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held, unless the right to vote such shares is reserved to the trustee(s) or another named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from Qualified Plan participants.

18. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among the Variable Contract owners and Qualified Plan participants with respect to voting Shares. Accordingly, unlike the circumstances surrounding Separate Accounts, because Qualified Plans are not required to pass through voting rights to participants, the issue of resolution of material irreconcilable conflicts of interest should not arise with respect to voting Shares.

19. In addition, if a Qualified Plan were to hold a controlling interest in an Insurance Fund, Applicants do not believe that such control would disadvantage other investors in such Insurance Fund to any greater extent than is the case when any institutional shareholder holds a majority of the shares of any open-end management investment company. In this regard, Applicants submit that investment in a portfolio by a Qualified Plan will not create any of the voting complications occasioned by VLI Account investments in the portfolio. Unlike VLI Account investments, Qualified Plan investor voting rights cannot be frustrated by veto rights of Participating Insurance Companies or state insurance regulators.

20. Where a Qualified Plan provides participants with the right to instruct the trustee(s) how to vote portfolio shares, Applicants see no reason why such participants generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage VLI Contract owners. The purchase of Shares by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

21. Applicants recognize that the prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 was first adopted, variable annuity separate accounts could invest in mutual funds whose shares were also offered to the general public. Therefore, the Commission staff may have been concerned with the potentially different investment motivations of public shareholders and owners of variable life insurance contracts. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and the investment decisions of public shareholders.

22. For reasons unrelated to the 1940 Act, however, Internal Revenue Service Ruling 81–225 (Sept. 25, 1981) effectively deprived VA Contracts funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment vehicle for Variable Contracts. In particular, Section 817(h) of the Code, in effect, requires that the investments made by both VLI Accounts and VA Accounts be ''adequately diversified.'' If such a separate account is organized as part of a ''two-tiered'' arrangement where the account invests in shares of an underlying open-end investment company (*i.e.,* an underlying fund), the diversification test will be applied to the underlying fund (or to each of several underlying funds), rather than to the separate account itself, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts.'' Accordingly, a separate account that invests in a publicly available mutual fund will not be adequately diversified for these purposes. In addition, any underlying fund, including an Insurance Fund that sells Shares to Separate Accounts, would, in effect, be precluded from also selling its Shares to the public. Consequently, the Insurance Fund may not sell Shares directly to the public.

23. Applicants assert that the rights of an insurance company or a state insurance regulator to disregard the voting instructions of owners of

Variable Contracts is not inconsistent with either mixed funding or shared funding. The National Association of Insurance Commissioners Variable Life Insurance Model Regulation (the ''NAIC Model Regulation'') suggests that it is unlikely that insurance regulators would find an underlying fund's investment policy, investment adviser or principal underwriter objectionable for one type of Variable Contract but not another type. The NAIC Model Regulation has long permitted the use of a single underlying fund for different separate accounts. Moreover, Article VI, Section 3 of the NAIC Model Regulation has been amended to remove a previous prohibition on one separate account investing in another Separate Account. Lastly, the NAIC Model Regulation does not distinguish between scheduled premium and flexible premium variable life insurance contracts. The NAIC Model Regulation, therefore, reflects the NAIC's apparent confidence that such combined funding is appropriate and that state insurance regulators can adequately protect the interests of owners of all Variable Contracts.

24. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulator could require action that is inconsistent with the requirements of other states in which the insurance company offers its contracts. However, the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

25. Shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under the 1940 Act. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected Participating Insurance Company will be required to withdraw its separate account investments in the relevant portfolio. This requirement will be provided for in the Participation Agreement that will be entered into by Participating Insurance Companies with an Insurance Fund.

26. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give Participating Insurance Companies the right to disregard the voting instructions of VLI Contract owners in certain circumstances. This right derives from the authority of state insurance regulators over VLI Accounts and VA Accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), a Participating Insurance Company may disregard VLI Contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser initiated by such contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good faith determinations.

27. A particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the voting instructions of a majority of VLI Contract owners. The Participating Insurance Company's action possibly could be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the voting instructions of VLI Contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the Insurance Fund's election, to withdraw its VLI Accounts' and VA Accounts' investments in the relevant portfolio. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the Participation Agreement entered into between the Participating Insurance Company and the Insurance Fund.

28. Applicants assert that there is no reason why the investment policies of a portfolio would or should be materially different from what these policies would or should be if the portfolio supported only VA Accounts or VLI Accounts, whether flexible premium or scheduled premium VLI Contracts. Each type of insurance contract is designed as a long-term investment program.

29. Each portfolio will be managed to attempt to achieve its specified investment objective, and not favor or disfavor any particular Participating Insurance Company or type of insurance contract. There is no reason to believe that different features of various types of Variable Contracts will lead to different investment policies for each or for different Separate Accounts. The sale of all Variable Contracts and ultimate success of all Separate Accounts depends, at least in part, on satisfactory investment performance, which provides an incentive for each Participating Insurance Company to seek optimal investment performance.

30. Furthermore, no single investment strategy can be identified as appropriate to a particular Variable Contract. Each ''pool'' of VLI Contract and VA Contract owners is composed of individuals of diverse financial status, age, insurance needs and investment goals. A portfolio supporting even one type of Variable Contract must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic support for the continuation of the portfolios. Mixed and shared funding will broaden the base of potential Variable Contract owner investors, which may facilitate the establishment of additional portfolios serving diverse goals.

31. Applicants do not believe that the sale of Shares to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those that would otherwise exist between owners of VLI Contracts and VA Contracts. Applicants submit that either there are no conflicts of interest or that there exists the ability by the affected parties to resolve potential conflicts consistent with the best interests of Variable Contract owners and Qualified Plan participants.

32. Applicants considered whether there are any issues raised under the Code, Treasury Regulations, or Revenue Rulings thereunder, if Qualified Plans, VA Accounts, and VLI Accounts all invest in the same portfolio. Applicants have concluded that neither the Code, nor the Treasury Regulations nor Revenue Rulings thereunder, present any inherent conflicts of interest if Qualified Plans, VLI Accounts, and VA Accounts all invest in the same portfolio.

33. Applicants note that, while there are differences in the manner in which

distributions from VLI Accounts and Qualified Plans are taxed, these differences have no impact on the portfolios. When distributions are to be made, and a VLI Account or Qualified Plan is unable to net purchase payments to make distributions, the VLI Account or Qualified Plan will redeem shares of the relevant portfolio at its net asset values in conformity with Rule 22c-1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company will then make distributions in accordance with the terms of the Qualified Plan.

34. Applicants considered whether it is possible to provide an equitable means of giving voting rights to VLI Contract owners and Qualified Plans. In connection with any meeting of an Insurance Fund's shareholders, the relevant transfer agent will inform each Participating Insurance Company, Adviser, and Qualified Plan of their share holdings and provide other information necessary for such shareholders to participate in the meeting (*e.g.,* proxy materials). Each Participating Insurance Company then will solicit voting instructions from owners of VLI Contracts and VA Contracts as required by either Rules 6e–2 or 6e–3(T), or Section 12(d)(1)(E)(iii)(aa) of the 1940 Act, as applicable, and its Participation Agreement with an Insurance Fund. Shares held by a General Account of a Participating Insurance Company will be voted by the Participating Insurance Company in the same proportion as Shares for which it receives voting instructions from its Variable Contract owners. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to the Shares would be no different from the voting rights that are provided to Qualified Plans with respect to shares of mutual funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the relevant Insurance Fund, to withdraw its investment in a portfolio, and no charge or penalty will be imposed as a result of such withdrawal.

35. Applicants do not believe that the ability of an Insurance Fund to sell Shares directly to its Adviser, Qualified Plans, or General Account gives rise to a senior security. ''Senior Security'' is defined in Section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Qualified Plans and owners of VLI Contracts, VLI Accounts, VA Accounts, Participating Insurance Companies, Qualified Plans, and the Adviser only have, or will only have, rights with respect to their respective Shares. These parties can only redeem such Shares at net asset value. No shareholder of a portfolio has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

36. Applicants do not believe that the veto power of state insurance commissioners over certain potential changes to portfolio investment objectives approved by owners of VLI Contracts creates conflicts between the interests of such owners and the interests of Qualified Plan participants. Applicants note that a basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Their interests and opinions may differ, but this does not mean that inherent conflicts of interest exist between or among such shareholders or that occasional conflicts of interest that do occur between or among them are likely to be irreconcilable.

37. Although Participating Insurance Companies may have to overcome regulatory impediments in redeeming shares of a portfolio held by their VLI Accounts, the Qualified Plans and the participants in participant-directed Qualified Plans can make decisions quickly and redeem their Shares and reinvest in another investment company or other funding vehicle without impediments, or as is the case with most Qualified Plans, hold cash pending suitable investment. As a result, conflicts between the interests of VLI Contract owners and the interests of Qualified Plans and Qualified Plan participants can usually be resolved quickly since the Qualified Plans can, on their own, redeem their Shares.

38. Finally, Applicants considered whether there is a potential for future conflicts of interest between Participating Insurance Companies and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of VLI Contract owners (or, for that matter, VA Contract owners) and Qualified Plan participants from future changes in the federal tax laws than that which already exists between Variable Contract owners.

39. Applicants assert that permitting an Insurance Fund to sell Shares to its Adviser for the purpose of obtaining seed money or to the General Account will enhance management of the Insurance Fund without raising significant concerns regarding material irreconcilable conflicts among different types of investors. A potential source of initial capital is the Adviser or a Participating Insurance Company. However, the provision of seed capital by the Adviser or by a Participating Insurance Company may be deemed to violate the exclusivity requirement of Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(15). Given the conditions of Treasury Regulation Section 1.817–5(f)(3) and the harmony of interest between a portfolio, on the one hand, and its Adviser or a Participating Insurance Company, on the other, Applicants assert that little incentive for overreaching exists. Furthermore, such investment should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, investments by an Adviser or by General Accounts, will permit the orderly and efficient creation and operation of a portfolio, and reduce the expense and uncertainty of using outside parties at the early stages of the portfolio's operations.

40. Various factors have limited the number of insurance companies that offer Variable Contracts. These factors include the costs of organizing and operating a funding vehicle, certain insurers' lack of experience with respect to investment management, and the lack of name recognition by the public of certain insurance companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own. Use of a portfolio as a common investment vehicle for VLI Accounts would reduce or eliminate these concerns. Mixed and shared funding should also provide several benefits to owners of VLI Contracts by eliminating a significant portion of the costs of establishing and administering separate underlying funds.

41. Participating Insurance Companies will benefit not only from the investment expertise of the Adviser, but also from the potential cost efficiencies and investment flexibility afforded by larger pools of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a portfolio, thereby

promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new portfolios more feasible. Therefore, mixed and shared funding will encourage more insurance companies to offer VLI Accounts. This should result in increased competition with respect to both VLI Account design and pricing, which can in turn be expected to result in more product variety.

42. Applicants also submit that, regardless of the type of shareholder in a portfolio, the Adviser is or would be contractually and otherwise obligated to manage the portfolio solely and exclusively in accordance with that portfolio's investment objectives, policies and restrictions, as well as any guidelines established by the Board. Thus, each portfolio will be managed in the same manner as any other mutual fund.

43. Applicants note that VLI Accounts historically have been employed to accumulate shares of mutual funds that are not affiliated with the depositor or sponsor of the VLI Account. In particular, Applicants assert that sales of Shares, as described above, will not have any adverse federal income tax consequences to other investors in the portfolios.

44. In addition, Applicants assert that granting the exemptions requested herein is in the public interest and will not compromise the regulatory purposes of Sections 9(a), 13(a), 15(a), or 15(b) of the 1940 Act or Rules 6e–2 or 6e–3(T) thereunder.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions which shall apply to each Insurance Fund:

1. A majority of the Board will consist of persons who are not ''interested persons'' of an Insurance Fund, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of death, disqualification or bona fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board, (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies, or (c) for such longer period as the Commission may prescribe by order upon application, or by future rule.

2. The Board will monitor an Insurance Fund for the existence of any material irreconcilable conflict between and among the interests of the owners of all VLI Contracts and VA Contracts and participants of all Qualified Plans investing in the Insurance Fund, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority, (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities, (c) an administrative or judicial decision in any relevant proceeding, (d) the manner in which the investments of an Insurance Fund are being managed, (e) a difference in voting instructions given by VA Contract owners, VLI Contract owners, and Qualified Plans or Qualified Plan participants, (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of General Account assets in a portfolio of an Insurance Fund), the Adviser, and any Qualified Plan that executes a Participation Agreement upon becoming an owner of 10% or more of the assets of a portfolio (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Each Participant will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Variable Contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each trustee for a Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their Participation Agreement with an Insurance Fund, and these responsibilities will be carried out with a view only to the interests of the Variable Contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans under their Participation Agreement with the relevant Insurance Fund, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested trustees, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of their VLI Accounts or VA Accounts from the relevant portfolio and reinvesting such assets in a different investment vehicle including another portfolio, (b) in the case of a Participating Insurance Company, submitting the question as to whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* VA Contract owners or VLI Contact owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change, (c) withdrawing the assets allocable to some or all of the Qualified Plans from the affected portfolio and reinvesting them in a different investment medium, and (d) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Variable Contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of the Insurance Fund, to withdraw such Participating Insurance Company's VA Account and VLI Account investments in a portfolio, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the

Insurance, to withdraw its investment in a portfolio, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their Participation Agreement with the Insurance Fund, and these responsibilities will be carried out with a view only to the interests of Variable Contract owners or, as applicable, Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested trustees of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will an Insurance Fund or the Adviser be required to establish a new funding vehicle for any Variable Contract or Qualified Plan. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the Variable Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding vehicle for the Qualified Plan if: (a) A majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan trustee makes such decision without a Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners whose Contracts are issued through registered VLI Accounts or registered VA Accounts for as long as required by the 1940 Act as interpreted by the Commission. However, as to Variable Contracts issued through VA Accounts or VLI Accounts not registered as investment companies under the 1940 Act, pass-through voting privileges will be extended to Variable Contract owners to the extent granted by the Participating Insurance Company. Accordingly, such Participating Insurance Companies, where applicable, will vote the Shares held in their Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that their Separate Accounts investing in the relevant portfolio calculate voting privileges in a manner consistent with all other Participants.

The obligation to calculate voting privileges as provided in this application shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreement with an Insurance Fund. Each Participating Insurance Company will vote Shares held in its VLI or VA Accounts for which no timely voting instructions are received, as well as Shares held in its General Account or otherwise attributed to it, in the same proportion as those Shares for which voting instructions are received. Each Qualified Plan will vote as required by applicable law, governing Qualified Plan documents and as provided in this application.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to Variable Contract owners or the Commission interprets the Act to require the same, the Adviser or any General Account will vote its respective Shares in the same proportion as all votes cast on behalf of all Variable Contract owners having voting rights; provided, however, that the Adviser or General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. Each Insurance Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in its shares), and, in particular, an Insurance Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although each Insurance Fund is not, or will not be, one of those trusts of the type described in Section 16(c) of the Act), as well as with Section 16(a) of the Act and, if and when applicable, Section 16(b) of the Act. Further, each Insurance Fund will act in accordance with the Commission's interpretations of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate thereto.

9. An Insurance Fund will make Shares available under a Variable Contract and/or Qualified Plan at or about the time it accepts any seed capital from the Adviser or from a General Account of a Participating Insurance Company.

10. Each Insurance Fund has notified, or will notify, all Participants that disclosure regarding potential risks of mixed and shared funding may be appropriate in VLI Account and VA Account prospectuses or Qualified Plan documents. Each Insurance Fund will disclose, in its prospectus that: (a) Shares may be offered to VA Accounts and VLI Accounts funding both VA Contracts and VLI Contracts and, if applicable, to Plans, (b) due to differences in tax treatment and other considerations, the interests of various Variable Contract owners participating in an Insurance Fund and the interests of Qualified Plan participants investing in an Insurance Fund, if applicable, may conflict, and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflicts.

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this application, then an Insurance Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, to the extent such rules are applicable.

12. Each Participant, at least annually, shall submit to the Board on behalf of an Insurance Fund such reports, materials or data as the Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board, when it so reasonably requests, shall be a contractual obligation of all Participants under their Participation Agreement with an Insurance Fund.

13. All reports of potential or existing conflicts received by the Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other

records shall be made available to the Commission upon request.

14. Each Insurance Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan an owner of 10 percent or more of the assets of a portfolio unless the Qualified Plan executes an agreement with an Insurance Fund governing participation in the portfolio that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares.

Conclusion

Applicants submit, for all the reasons explained above, that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18817 Filed 7–25–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64928; File No. SR–CBOE–2011–065]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Position and Exercise Limits for Options on the Standard & Poor's Depository Receipts

July 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 2011, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules to increase the position and exercise limits for options on the Standard and Poor's Depositary Receipts Trust (''SPY'') from 300,000 contracts to 900,000 contracts. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend CBOE Rule 4.11, Interpretation and Policy .07 to increase the position and exercise limits for SPY options from 300,000 contracts to 900,000 contracts.[5] This filing is based on separate filings previously submitted by NASDAQ OMX PHLX, Inc. (''PHLX''), which the Commission recently approved,[6] and by International Securities Exchange, LLC (''ISE'').[7]

The Exchange began trading SPY options on January 10, 2005 on the CBOE Hybrid Trading System. That year, the position limit for these options was increased from 75,000 contracts to the current limit of 300,000 contracts on the same side of the market.[8] Currently, SPY options have a position limit of 300,000 contracts on the same side on the market.

Under the Exchange's proposal, the options reporting requirement for SPY options would continue unabated. Thus, the Exchange would still require that each Trading Permit Holder (''TPH'') or TPH organization that maintains a position in SPY options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the option position, whether such position is hedged and, if so, a description of the hedge, and the collateral used to carry the position, if applicable. Exchange market-makers (including Designated Primary Market-Makers) would continue to be exempt from this reporting requirement, as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain an aggregate position of 200 or more option contracts would remain at this level for SPY options.[9]

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes that the existing surveillance procedures and reporting requirements at CBOE, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.[10]

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[11] Options positions are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the Exchange's requirement that TPHs file reports with the Exchange for any customer who held aggregate large long or short positions of any single class for the previous day will continue to serve as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] By virtue of CBOE Rule 4.12, Interpretation and Policy .02, which is not being amended by this filing, the exercise limit for SPY options would be similarly increased.

[6] *See* Securities Exchange Act Release No. 64695 (June 17, 2011) 76 FR 36942 (June 23, 2011) (SR–PHLX–2011–58) (approval order to increase position and exercise limits for SPY options).

[7] *See* Securities Exchange Act Release No. 64760 (June 28, 2011) (SR–ISE–2011–34) (proposed rule change to increase position and exercise limits for SPY options).

[8] *See* Securities Exchange Act Release No. 51041 (January 14, 2005), 70 FR 3408 (January 24, 2005) (SR–CBOE–2005–06).

[9] For reporting requirements, *see* CBOE Rule 4.13.

[10] These procedures have been effective for the surveillance of SPY options trading and will continue to be employed.

[11] 17 CFR 240.13d–1.

an important part of the Exchange's surveillance efforts.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a TPH or its customer may try to maintain an inordinately large un-hedged position in an option, particularly on SPY. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a TPH must maintain for a large position held by itself or by its customer.[12] In addition, the Commission's net capital rule, Rule 15c3–1 [13] under the Act,[14] imposes a capital charge on TPHs to the extent of any margin deficiency resulting from the higher margin requirement.

The Exchange believes that the proposed increase in position and exercise limits on SPY options is required for competitive purposes as well as for purposes of consistency and uniformity among the competing options exchanges. This supports the Exchange's current proposal to increase the position and exercise limits applicable to SPY options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[15] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will benefit large market makers (which generally have the greatest potential and actual ability to provide liquidity and depth in the product), as well as retail traders, investors, and public customers, by providing them with a more effective trading and hedging vehicle. In addition, the Exchange believes that the structure of SPY options and the considerable liquidity of the market for SPY options diminish the opportunity to manipulate this product and disrupt the underlying market that a lower position limit may protect against.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) (iii) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6) [19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will enable the Exchange to immediately compete with other exchanges that have already adopted the higher position and exercise limit for options on the SPY. Therefore, the Commission designates the proposal operative upon filing.[21]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–065 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–065. 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

[12] *See* CBOE Rule 12.3 for a description of margin requirements.

[13] 17 CFR 240.15c3–1.

[14] 15 U.S.C. 78s(b)(1).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2011–065 and should be submitted on or before August 16, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18797 Filed 7–25–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64929; File No. SR–C2–2011–015]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend a Pilot Program Related to the Exchange's Automated Improvement Mechanism

July 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2011, the C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to extend a program related to the Exchange's Automated Improvement Mechanism (''AIM'') for one year, until July 18, 2012. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In December 2009, the Commission approved adoption of C2's rules, including the AIM auction process.[5] AIM exposes certain orders electronically to an auction process to provide such orders with the opportunity to receive an execution at an improved price. The AIM auction is available only for orders that an Exchange Trading Permit Holder represents as agent (''Agency Order'') and for which a second order of the same size as the Agency Order (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).

One component of AIM was approved on a pilot basis: that there is no minimum size requirement for orders to be eligible for the auction.[6] The Commission has previously approved a one-year extension to the pilot program.[7] The proposed rule change merely extends the duration of the pilot program until July 18, 2012. Extending the pilot for an additional year will allow the Exchange time and opportunity to implement AIM, which is intended to give all sized orders opportunity for price improvement, at its discretion. Upon implementation, the Exchange would provide AIM data to the Commission as requested so the Commission can evaluate the impact of the pilot program on AIM order executions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5)[9] in particular in that by allowing the Exchange additional time and opportunity to implement AIM and the pilot program, the Exchange could give all sized orders opportunity for price improvement within AIM, which would serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009).

[6] *See* Exchange Rule 6.51, Interpretation .03.

[7] *See* Securities Exchange Act Release No. 63238 (November 3, 2010), 75 FR 68844 (November 9, 2010) approving SR–C2–2010–008.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

interest, the proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest because such waiver will allow the AIM pilot program to continue without interruption. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2011–015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2011–015 and should be submitted by August 16, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18798 Filed 7–25–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64930; File No. SR–CBOE–2011–066]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Two Pilot Programs Related to the Exchange's Automated Improvement Mechanism

July 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to extend two pilot programs related to the Exchange's Automated Improvement Mechanism (''AIM'') for one year, until July 18, 2012. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In February 2006, CBOE obtained approval of a filing adopting the AIM auction process.[5] AIM exposes certain orders electronically to an auction process to provide such orders with the opportunity to receive an execution at an improved price. The AIM auction is available only for orders that an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) approving SR–CBOE–2005–60.

Exchange Trading Permit Holder represents as agent (''Agency Order'') and for which a second order of the same size as the Agency Order (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).

Two components of AIM were approved on a pilot basis: (1) That there is no minimum size requirement for orders to be eligible for the auction, and (2) that the auction will conclude prematurely anytime there is a quote lock on the Exchange pursuant to Rule 6.45A(d).[6] In connection with the pilot programs, the Exchange has submitted to the Commission reports providing detailed AIM auction and order execution data. The Commission has approved five one-year extensions to the pilot programs.[7] The proposed rule change merely extends the duration of the pilot programs until July 18, 2012. Extending the pilots for an additional year will allow the Commission more time to consider the impact of the pilot programs on AIM order executions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5)[9] in particular in that by allowing the Commission additional time to evaluate the AIM pilot programs, it should serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest because such waiver will allow the AIM pilot programs to continue without interruption. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–066 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–066. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–066 and should be submitted by August 16, 2011.

[6] That rule relates to situations where a CBOE Market-Maker's quote interacts with the quote of another CBOE Market-Maker (i.e. when internal quotes lock).

[7] *See* Securities Exchange Act Release Nos. 54147 (July 14, 2006), 71 FR 41487 (July 21, 2006) approving SR–CBOE–2006–64; 56094 (July 18, 2007), 72 FR 40910 (July 25, 2007) approving SR–CBOE–2007–80; 58196 (July 18, 2008), 73 FR 43803 (July 28, 2008) approving SR–CBOE–2008–76 (in this filing, the Exchange agreed to provide additional information relating to the AIM auctions each month in order to aid the Commission in its evaluation of the pilot program, which the Exchange will continue to provide); 60338 (July 17, 2009), 74 FR 36803 (July 24, 2009) approving SR–CBOE–2009–051; and No. 62522 (July 16, 2010), 75 FR 43596 (July 26, 2010) approving SR–CBOE–2010–067.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18799 Filed 7–25–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64937; File No. SR–CHX–2011–17]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding the Submission by the Exchange of Clearing-Related Information for Trades Executed on the Exchange as Well as for Trades Executed Otherwise Than on the Exchange

July 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 7, 2011, the Chicago Stock Exchange, Incorporated (''Exchange'' or ''CHX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add new Rule 6 to Article 21 (Clearance and Settlement) to set forth the terms upon which the Exchange shall submit information for clearing and settlement, and to amend Article 1, Rule 1 (Definitions), and Article 21, Rule 1 (Trade Recording with a Qualified Clearing Agency) to define certain relevant terms. The text of this proposed rule change is available on the Exchange's Web site at (*http://www.chx.com*), at the Exchange's Office of the Secretary and in 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 CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add new Rule 6 to Article 21 (Clearance and Settlement) to set forth the terms upon which the Exchange shall submit information for clearing and settlement, and to amend Article 1, Rule 1 (Definitions), and Article 21, Rule 1 (Trade Recording with a Qualified Clearing Agency) to define certain relevant terms. New Article 21, Rule 6 provides for the submission of clearing related information to a Qualified Clearing Agency (currently, the National Securities Clearing Corp. or NSCC).[3] Proposed Rule 6(a) addresses the submission to NSCC of clearing information for trades executed on the Exchange and is based upon the provisions of CBOE Rule 6.50 (Submission for Clearance).[4] Proposed Rule 6(a) specifies that all transactions executed on the Exchange shall be submitted for clearance to a Qualified Clearing Agency, and all such transactions shall be subject to the rules of the Qualified Clearing Agency.[5] The Clearing Participant shall be responsible for the clearance of the Exchange transactions of such Clearing Participant and of each Participant who gives up such Clearing Participant's name pursuant to either a Letter of Guarantee filed under Article 7, Rule 10 with the Exchange or other authorization given by such Clearing Participant to such Participant.[6] These provisions are typical in the clearance and settlement of exchange transactions and fairly place the responsibility for paying for, or delivery of, securities on the Participant in which name the trades are submitted for clearance and settlement.

Proposed new Rule 6(b) addresses clearing submissions made via CHX systems for transactions executed on another trading center or in the over-the-counter marketplace and is based upon Nasdaq Rule 7038 (Step-Outs and Sales Fee Transfers). Such submissions may be made by the Exchange only on behalf of a CHX-registered Institutional Broker acting as an authorized agent of a Clearing Participant.[7] The Institutional Broker may submit a clearing-only entry into the Exchange's systems for the purpose of transferring securities from one Clearing Participant to another provided that the trade has been properly reported for transaction reporting purposes. Once all of the final clearing allocations have been entered into the Exchange systems for submission to NSCC, the submissions are deemed to be ''locked in'' for purposes of comparison and settlement.

These submissions of non-Exchange executions may occur in several circumstances. First, an Institutional Broker may buy or sell securities on another trading center as a correspondent of a clearing member of that trading center. Any resulting execution report would be ''flipped'' from the executing clearing member via entries in the Exchange's systems to the trading account of the Institutional Broker or the CHX Clearing Participant on whose behalf it is acting. Second, an Institutional Broker may instruct a third party broker-dealer (which is not an Institutional Broker) to execute a cross transaction in the over-the-counter market and report the transaction to a Trade Reporting Facility (''TRF'') using its trading symbol or the symbol of its

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In proposed Article 1, Rule 1 (ff), a Qualified Clearing Agency is defined a clearing agency as defined in Section 3(a)(23) of the Exchange Act which is registered with the Commission pursuant to the provisions of the Section 17A(b)(2) of the Exchange Act or has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation and affirmation services. CHX is proposing to delete the existing, but somewhat outdated, definitions of the terms Qualified Clearing Agency, Registered Clearing Agency and Fully Interfaced Clearing Agency from the Interpretations and Polices [sic] section of Article 21, Rule 1 and replace them with the definition of Qualified Clearing Agency in Article 1, Rule 1 in order to update its rules and ensure that the definition applies concurrently to proposed new Rule 6.

[4] The Exchange notes that existing Article 21, Rule 1(d) provides that the Exchange shall submit trade data regarding every transaction that is executed on, and reported to, the Exchange to a Qualified Clearing Agency for recording. We propose to add Rule 6(a) in order to provide absolute clarity regarding the nature and scope of the Exchange's activity regarding clearing submissions.

[5] The CHX submits clearing information to NSCC through the Regional Interface Operation (''RIO'') system.

[6] We proposed to define the term Clearing Participant in Article 1, Rule 1(ee) as a Participant which has been admitted to membership in a Qualified Clearing Agency pursuant to the provisions of the Rules of the Qualified Clearing Agency.

[7] CHX-registered Institutional Brokers are an elective sub-category of Exchange Participants requiring registration with the Exchange and are subject to the obligations of Article 17 of the CHX rules, in addition to the other provisions of Exchange rules.

clearing firm for purposes of reporting it to the Consolidated Tape. The Institutional Broker may then enter the transaction information into the Exchange's systems, and transfer the positions from its own trading account (or the account of its clearing firm) to the accounts of ultimate beneficiaries of the trade. Once all components of the transaction are properly allocated, the information will be forwarded to the National Securities Clearing Corp. (''NSCC'') via the Exchange's systems for clearance and settlement. Third, transactions may be executed on another trading center by a third party broker-dealer, which then utilizes an Institutional Broker as its agent for handling the allocation of the clearing information. These third party transactions may include both cross transactions executed in the over-counter-market [sic] and reported to a TRF by the third party broker-dealer, as well as purchases or sales of securities by the third party broker-dealer on another exchange or other trading center.[8] The third party broker-dealer instructs an Institutional Broker to handle any substitution of Clearing Participants and allocation of the trade. Clearing information for third party cross trades and single-sided purchases or sales is then processed within the CHX Brokerplex® system [9] and submitted to NSCC in the same manner as if the trades had been executed by an Institutional Broker as described above.

In order to ensure that the actions of the Institutional Broker are fully authorized by the Clearing Participant, proposed Rule 6(b) requires that Institutional Brokers making such submissions must be a party to an agreement with the Clearing Participant in which name the entries are submitted under which the Institutional Broker has received authorization from the Clearing Participant to act on its behalf.[10] Copies of these agreements shall be filed by the Institutional Broker with the Exchange. The Exchange represents that it will monitor clearing submissions made pursuant to Rule 6(b) to ensure that the Institutional Brokers involved in those transactions have the appropriate agreements in place, and will take disciplinary action to enforce this requirement in appropriate circumstances.

The Exchange notes that while the systems used by the CHX in making such clearance submissions do not contain fully-automated comparison features, there are procedural safeguards which occur as part of these submissions to ensure that the manual comparison is valid. For example, many of these transactions represent the cash equities component of combination stock-options orders or a hedge on a derivatives position. The Institutional Broker entering into Brokerplex the clearing information it receives from its customer is responsible for ensuring that all of the final allocations made via the step-out process are accurate and complete. Clearing information will not normally be forwarded to the Clearing Agency until all of the allocations are confirmed with the order sender. Institutional Brokers shall be required to maintain agreements with both Clearing Participants and any non-Participant customers which authorize the Institutional Broker to make the clearing-only submissions and bind the Parties to the trade. Furthermore, the Institutional Broker normally communicates the allocation information to the Clearing Participant in which name the submissions are made to NSCC in order to prevent breaks or disputes regarding the allocations.

A Participant is prohibited from using a non-tape, clearing-only submission for the purpose of effecting a transaction required to be trade reported and that has not been trade reported or reporting a trade for regulatory purposes.[11] Submission of non-tape, clearing-only records to the Exchange by a Participant does not satisfy any obligation such members may have to report transactions as required by the applicable rules of other self-regulatory organizations. New Interpretation and Policy .01 to Rule 6 will require that an Institutional Broker submitting an entry for a transaction executed otherwise than on the Exchange obtain documentary evidence of the non-Exchange trade execution no later than the close of trading. This will ensure that, irrespective of historical practices described above, the Institutional Broker will have to receive written evidence of the non-Exchange trade it submitted for clearing, thus strengthening the safeguards imbedded in the process of submitting such trades for comparison. New Interpretation and Policy .02 reinforces the implied requirement that .02 [sic] when an Institutional Broker enters a non-tape, clearing-only record, the Institutional Broker shall be responsible for ensuring that all clearing information is accurate and complete prior to its submission.

Section (c) of Proposed Rule 6 governs non-tape riskless submissions.[12] These provisions would permit an Institutional Broker registered with the Exchange to make non-tape submissions into the Exchange's systems for submission to clearing to facilitate riskless transactions taking place on other national securities exchanges, or the over-the-counter market. For riskless transactions in which an Institutional Broker, after having received an order to buy a security, purchases the security at the same price to satisfy the order to buy or, after having received an order to sell, sells the security at the same price to satisfy the order to sell, the Institutional Broker may submit, for the offsetting ''riskless'' portion of the transaction, a clearing-only report. The Exchange will also obtain and keep a record identifying transactions which are handled as ''riskless principal.'' The Exchange believes that the provisions of Section (c) of proposed Rule 6 would govern the activity of Institutional Brokers when they buy or sell securities on another national securities exchange, or in the over-the-counter marketplace, on behalf of another client and when the addition of new Clearing Participants via the step-in process as described above is not required. Nothing in the provisions of Section (c) of proposed Rule 6 relieves any Participant or other party from its obligation to fully and properly report transactions as required by the applicable rules of other self regulatory organizations.

Proposed Section (d) of Rule 6 provides that the Exchange shall not be responsible or liable in any way whatsoever to any member, member organization, clearing member organization, Qualified Clearing Agency or securities depository for compared trades, the failure to compare trades or for any delays, errors or omissions in the comparison process or for the production and delivery of or for the failure to produce and deliver lists and reports.

Each Clearing Participant which is a party to a non-tape, clearing-only submission under this rule will pay a Trade Processing Fee in the amount

[8] The Institutional Broker may be instructed to allocate the trades at an average price of the transactions executed by the third party broker-dealer.

[9] The Brokerplex® system is an order entry, management and recordation system provided by the Exchange for use by Institutional Brokers.

[10] In addition, the Exchange requires Clearing Participants to sign a clearing agreement by which the latter accepts responsibility for non-Exchange transactions submitted to NSCC through the auspices of an authorized Institutional Broker.

[11] The Exchange plans to monitor the activity of Participants which make clearing-only submissions for compliance with applicable trade reporting rules.

[12] Article 9, Rule 14 (Reporting Riskless Principal Transactions) describes the manner in which Exchange Participants are required to report riskless principal transactions for trade reporting purposes.

specified in the Exchange's Fee Schedule.[13] As part of this filing, we propose to retain the Trade Processing Fee charged to Participants for the clearing submission service.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[14] and furthers the objectives of Section 6(b)(5) in particular,[15] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest by setting forth the rules and principles governing the submission of clearing information to a Qualified Clearing Agency. By facilitating the submission for both CHX and non-CHX executed trades, the Exchange is providing a safe, reliable means of submitting such information to a Qualified Clearing Agency, responding to the preferences of certain Participants to have CHX make such clearing-related submissions, and introducing competition with other exchanges, such as Nasdaq, which provide similar services.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes 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 up to 90 days (i) As the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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–CHX–2011–17 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–CHX–2011–17. 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 CHX. 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–CHX–2011–17 and should be submitted on or before August 16, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18816 Filed 7–25–11; 8:45 am]

BILLING CODE 8011–01–P

[13] Proposed Article 21, Rule 6(e). The Trade Processing Fees are specified in Section E.7. of the CHX Schedule of Fees and Assessments.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64938; File No. SR–Phlx–2011–93]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Service Fee on QCC Orders and Floor QCC Orders

July 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that, on July 11, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule to adopt a Service Fee of $0.05 per side for Qualified Contingent Cross (''QCC'') Orders (electronic)[3] and Floor QCC Orders.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (''QCTs'') that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

[4] A Floor QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (''NBBO''); and (iv) be rejected if a Customer order is resting on the

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a Service Fee for both QCC Orders (electronic) and Floor QCC Orders once a Firm reaches the Firm Related Equity Option Cap (''Cap''), which is described below. The Exchange proposes this Service Fee recognizing that the qualified contingent cross capability is a premium service offered by the Exchange. This Service Fee is proposed to recoup costs incurred by the Exchange to offer this capability including trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange.

Firms are subject to a $75,000 Cap. Firm equity option transaction charges and QCC Transaction Fees, in the aggregate, for one billing month may not exceed the Cap per member organization when such members are trading in their own proprietary account. The Firm equity options transaction charges are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.[5]

The Exchange proposes to adopt a Service Fee of $0.05 per side once a Firm has reached the Cap. This $0.05 per side Service Fee will apply to every contract side of a QCC Order (electronic) and Floor QCC Order that is executed once a Firm has reached the Cap in a particular calendar month. A Firm that does not reach the Cap in a particular calendar month will not be assessed the Service Fee in that month. The Exchange proposes to add text to Section II of the Fee Schedule entitled ''Equity Options Fees'' to describe the Service Fee. The Exchange also proposes to add a clarifying sentence to Section II of the Fee Schedule to clarify that QCC Transaction Fees are included in the monthly calculation of the Cap.[6]

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed Service Fee is reasonable because Firms have the ability to cap fees and even with the added Service Fee, Firms should generally pay less once they reach the Cap because they will not pay the normally applicable transaction fees. This Service Fee would reduce the discrepancy that exists today between Firms and other market participants. For example, Firms who reach the Cap in a particular month would pay the Service Fee instead of other normally applicable transaction fees as a result of reaching the Cap. As stated in the filing, the Service Fee does not apply to Firms who did not reach the Cap. Also, the Exchange believes that the Service Fee is reasonable because the fee would allow the Exchange to defray costs incurred in providing the qualified contingent cross capability in the form of QCC Orders (electronic) and Floor QCC Orders. Specifically, the Exchange is providing trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange. The Exchange also believes that the Service Fee is reasonable because it is comparable to a fee assessed by the International Securities Exchange, LLC (''ISE''). ISE assesses a $0.05 per side service fee for qualified contingent cross volume once a member reaches the monthly fee cap.[9]

The Exchange believes that the proposed Service Fee is equitable and not unfairly discriminatory because it would be uniformly applied to Firms in the same way that the Cap is uniformly available to these Firms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. *See* Rule 1064(e). *See also* Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR–Phlx–2011–56) (a rule change to establish a qualified contingent cross order for execution on the floor of the Exchange).

[5] In addition, Firms that (i) Are on the contra-side of an electronically-delivered and executed Customer complex order; and (ii) have reached the Cap will be assessed a $0.05 per contract fee. *See* Section II of the Exchange's Fee Schedule.

[6] *See* Securities Exchange Act Release No. 64520 (May 19, 2011), 76 FR 30223 (May 24, 2011) (SR–Phlx–2011–66) (a rule change to adopt fees applicable to a Qualified Contingent Cross Order) and SR–Phlx–2011–84 (an immediately effective proposed rule change to adopt fees applicable to a Floor Qualified Contingent Cross order). QCC Transaction Fees are defined in Section II of the Fee Schedule as applicable to QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* ISE's Schedule of Fees. *See also* Securities Exchange Act Release No. 64270 (April 8, 2011), 76 FR 20754 (April 13, 2011) (SR–ISE–2011–13).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2011–93 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–2011–93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–93 and should be submitted on or August 16, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18822 Filed 7–25–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64931; File No. SR–ISE–2011–41]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program

July 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the ISE. The ISE has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend two pilot programs related to its Price Improvement Mechanism (''PIM''). The text of the proposed rule amendment is as follows, with proposed deletions in [brackets], and proposed additions in italics:

Rule 723. Price Improvement Mechanism for Crossing Transactions

* * * * *

Supplementary Material to Rule 723

.01–.02 No Change.

.03 Initially, and for at least a Pilot Period expiring on *July 18, 2012* [July 18, 2011], there will be no minimum size requirements for orders to be eligible for the Price Improvement Mechanism. During the Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders within the Price Improvement Mechanism, that there is significant price improvement for all orders executed through the Price Improvement Mechanism, and that there is an active and liquid market functioning on the Exchange outside of the Price Improvement Mechanism. Any data which is submitted to the Commission will be provided on a confidential basis.

.04 No Change.

.05 Paragraphs (c)(5), (d)(5) and (d)(6) will be effective for a Pilot Period expiring on *July 18, 2012* [July 18, 2011]. During the Pilot Period, the Exchange will submit certain data relating to the frequency with which the exposure period is terminated by unrelated orders. Any data which is submitted to the Commission will be provided on a confidential basis.

.06–.07 No Change.

* * * * *

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

The Exchange currently has two pilot programs related to its PIM.[5] The current pilot period provided in paragraphs .03 and .05 of the Supplementary Material to Rule 723 is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release Nos. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (Approving the PIM pilot (the ''Approval Order'')); 52027 (July 13, 2005), 70 FR 41804 (July 20, 2005) Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Year Pilot Extension for the Price Improvement Mechanism); 54146 (July 14, 2006), 71 FR 41490 (July 21, 2006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Year Pilot Extension Until July 18, 2007 for the Price Improvement Mechanism); 56106 (July 19, 2007), 72 FR 40914 (July 25, 2007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Week Extension for the Price Improvement Mechanism Pilot Program); and 56156 (July 27, 2007), 72 FR 43305 (August 3, 2007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension for the Price Improvement Mechanism Pilot Program); 58197 (July 18, 2008), 73 FR 43810 (July 28, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program); and 60333 (July 17, 2009), 74 FR 36792 (July 24, 2009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program).

set to expire on July 18, 2011.[6] Paragraph .03 provides that there is no minimum size requirement for orders to be eligible for the Price Improvement Mechanism. Paragraph .05 concerns the termination of the exposure period by unrelated orders. In accordance with the Approval Order, the Exchange has continually submitted certain data in support of extending the current pilot programs. The Exchange proposes to extend these pilot programs in their present form, through July 18, 2012, to give the Exchange and the Commission additional time to evaluate the effects of these pilot programs before requesting permanent approval of the rules. To aid the Commission in its evaluation of the PIM Functionality, ISE will also continue to provide additional PIM-related data as requested by the Commission.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Since the Price Improvement Mechanism has been operating for a relatively short period of time, the Exchange believes it is appropriate to extend the pilot periods to provide the Exchange and Commission more data upon which to evaluate the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

[6] *See* Securities Exchange Act Release No. 62513 (July 16, 2010), 75 FR 43221 (July 23, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest because such waiver will allow the pilot programs to continue without interruption. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2011–41 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–ISE–2011–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–41 and should be submitted by August 16, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18800 Filed 7–25–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64933; File No. SR–BX–2011–047]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Renumber Rule 5230

July 20, 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 18, 2011, NASDAQ OMX BX, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to renumber Rule 5230 as Rule 5230A. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[4]

5000A. Supplementary Conduct Rules

[5230.] *5230A.* Payments Involving Publications that Influence the Market Price of a Security

(a)–(b) No change.

* * * * *

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

In January 2010, the Exchange adopted Rule 5230, which incorporated changes to the corresponding FINRA rules on payments involving publications that influence the market price of a security.[5] At that time, the remainder of the Exchange's Rule 5000 Series was unused. Subsequently, the Exchange has adopted listing rules for the BX Venture Market and placed those rules in the Rule 5000 Series.[6] Because Rule 5230 deals with member conduct, and not listing on the BX Venture Market, the Exchange proposes to renumber existing Rule 5230 as Rule 5230A to separate it from the listing rules and thereby avoid confusion. There is no change to the substance of the rule. The Exchange also proposes to adopt Rule 5000A as a title for this new series of rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections 6(b)(5) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed change will help avoid confusion that could otherwise arise from having a member conduct rule intertwined in the Exchange's listing rules.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder,[10] in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The proposed rule change will renumber an existing rule, without changing the substance of that rule. Therefore, the Exchange believes it does not significantly affect the protection of investors or the public interest or raise any novel or significant regulatory issues.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rules of the Exchange found at *http://nasdaqomxbx.cchwallstreet.com.*

[5] Securities Exchange Act Release No. 61495 (February 4, 2010), 75 FR 7528 (February 19, 2010) (SR–BX–2010–006).

[6] Securities Exchange Act Release No. 64437 (May 6, 2011), 76 FR 27710 (May 12, 2011) (SR–BX–2010–059).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–047 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–2011–047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–047 and should be submitted on or before August 16, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18801 Filed 7–25–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64934; File No. SR–FINRA–2011–031]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 9251 to Explicitly Protect From Discovery Those Documents That Federal Law Prohibits FINRA From Disclosing

July 20, 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 8, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 9251 to explicitly protect from discovery those documents that federal law prohibits FINRA from disclosing.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rule 9251 delineates the types of documents that FINRA's Department of Enforcement (''Enforcement'') and Department of Market Regulation (''Market Regulation'') must produce to respondents during the discovery phase of a disciplinary proceeding. The rule also explicitly shields certain types of documents from production. For example, Enforcement and Market Regulation may withhold documents that are protected by attorney-client privilege or constitute attorney work product.[3] The rule allows additional types of documents to be withheld where a hearing officer determines that they are irrelevant to the proceeding or for other good cause.[4] The rule, moreover, contains procedural safeguards. For example, a hearing officer may privately review and determine the appropriate status of a withheld document.[5] The rule does not, however, explicitly shield from discovery documents that federal law prohibits FINRA from disclosing. To help ensure both an efficient discovery process and compliance with federal law, the proposed rule change clarifies that Enforcement and Market Regulation shall withhold such documents from respondents during a disciplinary proceeding. Further, the proposed rule change precludes a hearing officer from requiring Enforcement or Market Regulation to either produce or reveal information about the existence of a document if federal law prohibits such disclosure.

The proposed rule change would amend FINRA Rule 9251 to explicitly protect from discovery those documents that federal law prohibits FINRA from disclosing. Currently, when Enforcement and Market Regulation possess a document that federal law prohibits them from disclosing, they must affirmatively seek a hearing officer determination that they can withhold it on the grounds of a lack of relevancy or for other good cause. The proposed rule change would increase efficiency by avoiding the need for the parties to brief, and hearing officers to resolve, unnecessary ''good cause'' motions regarding documents that FINRA cannot legally produce during disciplinary proceedings. The procedural safeguard discussed above would apply to this category of withheld documents.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FINRA Rule 9251(b)(1)(A).

[4] FINRA Rule 9251(b)(1)(D).

[5] FINRA Rule 9251(c).

publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposal also is consistent with Section 15A(b)(7) of the Act,[7] which provides that FINRA members and associated persons must be appropriately disciplined for violations of any provisions of the Act or FINRA rules. FINRA believes that the proposed rule change is consistent with these purposes because it promotes a fair and efficient disciplinary process by avoiding the need for unnecessary ''good cause'' motions regarding documents that federal law prohibits FINRA from producing.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–031. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–031 and should be submitted on or before August 16, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18802 Filed 7–25–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78*o*–3(b)(7).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12697 and #12698]

Pennsylvania Disaster #PA–00040

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Pennsylvania (FEMA–4003–DR), dated 07/13/2011.

Incident: Severe Storms and Flooding.

Incident Period: 04/25/2011 through 04/28/2011.

Effective Date: 07/13/2011.

Physical Loan Application Deadline Date: 09/12/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 04/13/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/13/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bradford, Lycoming, Sullivan, Tioga, Wyoming.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12697B and for economic injury is 12698B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–18784 Filed 7–25–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12699 and #12700]

Puerto Rico Disaster #PR–00013

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–4004–DR), dated 07/14/2011.

Incident: Severe Storms, Flooding, Mudslides, and Landslides.

Incident Period: 05/20/2011 through 06/08/2011.

Effective Date: 07/14/2011.

Physical Loan Application Deadline Date: 09/12/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 04/16/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/14/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Municipalities: Anasco, Caguas, Camuy, Ciales, Hatillo, Las Piedras, Morovis, Orocovis, San Lorenzo, San Sebastian, Utuado, VILLALBA.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12699B and for economic injury is 12700B:

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–18785 Filed 7–25–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12695 and #12696]

Ohio Disaster #OH–00029

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Ohio (FEMA–4002–DR), dated 07/13/2011.

Incident: Severe Storms and Flooding.

Incident Period: 04/04/2011 through 05/15/2011.

Effective Date: 07/13/2011.

Physical Loan Application Deadline Date: 09/12/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 04/13/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/13/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adams, Athens, Belmont, Brown, Clermont, Gallia, Guernsey, Hamilton, Hocking, Jackson, Jefferson, Lawrence, Meigs, Monroe, Morgan, Noble, Pike, Ross, Scioto, Vinton, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12695B and for economic injury is 12696B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–18786 Filed 7–25–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12651 and #12652]

Indiana Disaster Number #IN–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only

for the State of Indiana (FEMA—1997—DR), dated 06/23/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/19/2011 through 06/06/2011.

Effective Date: 07/15/2011.

Physical Loan Application Deadline Date: 08/22/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 03/23/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Indiana, dated 06/23/2011, is hereby amended to establish the incident period for this disaster as beginning 04/19/2011 and continuing through 06/06/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–18788 Filed 7–25–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7533]

Waiver of Restriction on Assistance to the Central Government of Nicaragua

Pursuant to Section 7086(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117) as carried forward by the Full-Year Continuing Appropriations Act, 2011 (Div. B, Pub. L. 112–10) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7086(c)(1) of the Act with respect to Nicaragua and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: July 12, 2011.

Thomas R. Nides,

Deputy Secretary for Management and Resources.

[FR Doc. 2011–18852 Filed 7–25–11; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Record of Decision (ROD) and Order for a Written Reevaluation of Final Environmental Impact Statement (FEIS) for the Development and Expansion of Runway 9R–27L and Associated Projects at the Fort Lauderdale-Hollywood International Airport

AGENCY: Federal Aviation Administration, U.S. Department of Transportation (DOT).

ACTION: Notice of Availability of a Record of Decision (ROD) and Order.

SUMMARY: The FAA is issuing this notice to advise the public that it has issued a ROD and Order for a written reevaluation of the FEIS for the Development and Expansion of Runway 9R–27L and Associated Projects at the Fort Lauderdale-Hollywood International Airport, Broward County, Florida. The FEIS for the runway expansion project was issued in June 2008. The FAA issued a ROD for this Federal action in December 2008. The runway expansion and other associated airport projects are currently undergoing final engineering and design. Construction activities are scheduled to begin in the summer of 2011. The Broward County (the Airport Sponsor) has submitted a request to the FAA for approval of the engineering and design refinements that are minor changes to the previously approved project. The ROD and Order approves the engineering and design refinements to the previously approved project disclosed in the written reevaluation and as shown on a revised Airport Layout Plan (ALP) that has been submitted to the FAA. Subsequent to this ROD and Order, the FAA will approve the revised ALP.

SUPPLEMENTARY INFORMATION: Copies of this ROD and Order, and written reevaluation are available for public review at the following locations during normal business hours: Fort Lauderdale-Hollywood International Airport, 100 Aviation Boulevard, Fort Lauderdale, FL 33315, 954–359–6978; Federal Aviation Administration Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida, Telephone (407) 812–6331; Federal Aviation Administration Southern Region Office, 1701 Columbia Avenue, College Park, GA 30337, Telephone (404) 305–6700. The ROD and Order, and written re-evaluation will also be available on Broward County's Web site: *http://www.broward.org/Airport/Community/Pages/FEIS.aspx.* The ROD and Order, and written reevaluation will also be available for review at the FAA's Web site *http://www.faa.gov.*

FOR FURTHER INFORMATION CONTACT: Virginia Lane, Environmental Program Specialist, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, Telephone (407) 812–6331 Extension 129.

Issued in Orlando, Florida on July 15, 2011.

Bart Vernace,

Acting Manager, Orlando Airports District Office.

[FR Doc. 2011–18815 Filed 7–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: September 21, 2011—9 a.m. to 4 p.m.

Place: Federal Aviation Administration, 800 Independence Avenue, SW.—Round Room (10th Floor), Washington, DC 20591.

Purpose: The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at (202) 267–8937 or *gloria.dunderman@faa.gov.* Attendees will have to present picture ID at the security desk and be escorted to the Round Room.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on July 14, 2011.

Paul Fontaine,

Director (A), Research & Technology Development.

[FR Doc. 2011–18464 Filed 7–25–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Intent To Prepare an Environmental Impact Statement; US 41 Interstate Conversion Plan, Milwaukee, Waukesha, Washington, Dodge, Fond Du Lac, Winnebago, Outagamie and Brown Counties, WI

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier I

Environmental Impact Statement (EIS) will be prepared for the proposed interstate conversion of U.S. Highway 41 in Milwaukee, Waukesha, Washington, Dodge, Fond du Lac, Winnebago, Outagamie, and Brown Counties, Wisconsin by WisDOT in conformance with 40 CFR part 1500 and the FHWA regulations.

The Project: The FHWA, in cooperation with the WisDOT, will prepare a Tier 1 Environmental Impact Statement (EIS) for a proposal to convert U.S. Highway 41 (US 41) in Milwaukee, Waukesha, Washington, Dodge, Fond du Lac, Winnebago, Outagamie, and Brown Counties, Wisconsin, approximately 142 miles in length, from a principal arterial on the National Highway System to an Interstate Highway (IH). Under Sections 1304(b) and (c) of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act—A Legacy for Users (SAFETEA–LU) the 142-mile U.S. Highway 41 corridor between Interstate Route 94 via Interstate Route 894 and Highway 45 near Milwaukee and Interstate Route 43 near Green Bay was designated as a High Priority Corridor on the National Highway System and further, as a future part of the Interstate System. U.S. Highway 41 may be added to the Interstate System at such time as the Secretary determines that the segment meets the Interstate design standards in 23 U.S.C. 109(b).

The proposed project is intended to address the requirements necessary to obtain FHWA concurrence to convert U.S. Highway 41 from a principal arterial to an Interstate Highway and officially sign the corridor as an Interstate facility. Improvements to upgrade the present US 41 corridor to interstate highway standards will be described in the Tier 1 EIS. The proposed improvements are intended to be environmentally sound.

The proposed Tier 1 EIS project is intended to consider cumulative and indirect environmental impacts of the proposed IH system designation, including alternatives development and analysis. The Tier 1 environmental document will also inventory and document existing geometric, safety, operational and planning features, review existing geometric and safety standards and operational policy and standards, and determine the existing corridor's deficiencies as an Interstate facility. The Tier 1 EIS will be completed to a Record of Decision indicating a broad strategy for upgrading the existing corridor to IH standards.

A scoping process will be initiated that involves all appropriate federal and state agencies. This will continue throughout the study as an ongoing process. A public information effort will be initiated in fall 2011 to include those agencies, local agencies, and private organizations and citizens who have previously expressed, or are known to have, interest in this proposal. This effort will also inform the public living in the study area. Public information meetings will be held across the study area to engage the regional community in the decision-making process and obtain public comment. In addition, public hearings will be held to present the findings of the Tier 1 EIS. Public notice will be given concerning the time and place of the informational meetings and public hearings. The Tier 1 EIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Tier 1 EIS should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided under the heading **FOR FURTHER INFORMATION CONTACT**.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

FOR FURTHER INFORMATION CONTACT: Tracey Blankenship, Major Projects Program Manager, Federal Highway Administration, 525 Junction Road, Suite 8000, Madison, WI 53717; *Telephone:* (608) 829–7500. You may also contact Tammy Rabe, Wisconsin Department of Transportation, 944 Vanderperren Way, Green Bay, WI 54324; *Telephone:* 920–492–5661.

Electronic Access

An electronic copy of this document may be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661 by using a computer modem and suitable communications software. Internet users may reach the Office of Federal Register's home page at: *http://www.archives.gov/* and the Government Printing Office's database at: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: July 20, 2011.

Tracey Blankenship,

Major Projects Program Manager, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. 2011–18818 Filed 7–25–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA, U.S. Army Corps of Engineers (USACE) and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the proposed SH 121 (Chisholm Trail) highway project in the State of Texas. Those actions grant licenses, permits and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before January 23, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Salvador Deocampo, District Engineer, Texas Division, FHWA, J.J. Pickle Federal Building 300 East 8th Street, Room 826, Austin, Texas 78701; phone number 512–536–5950; e-mail: *Salvador.Deocampo@dot.gov;* FHWA Texas Division normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday. For Texas Department of Transportation (TxDOT): Ms. Dianna Noble, P.E., Director Environmental Affairs Division, TxDOT, 118 E. Riverside, Austin, Texas 78704; phone number 512–416–2734; e-mail: *Dianna.Noble@txdot.gov;* TxDOT normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: State

Highway (SH) 121 (also known as Chisholm Trail) from Farm to Market (FM) 1187 to United States (US) 67 within the cities of Fort Worth, Crowley, Burleson, Joshua and Cleburne in Tarrant and Johnson Counties. Project Reference Number: TxDOT CSJ: 0504–04–001 and 0504–05–001. The project is the construction of an approximate 14-mile new location toll road (SH 121), that will connect FM 1187 to US 67. The project will consist of an ultimate facility of two travel lanes in each direction with shoulders. The project will be constructed in phases. The actions by the Federal agencies on the project, and the laws under which such actions were taken, are described in the documented Environmental Assessment (EA), with a Findings of No Significant Impact (FONSI) issued May 20, 2004 and reaffirmed May 10, 2011 and in other document project records. The EA, FONSI, and other project records for the listed project are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above. The FHWA EA and FONSI can also be viewed at the project Web site: *http://www.txdot.gov/project_information/projects/fort_worth/southwest_parkway/environmental_assessment.htm.* The USACE decision (USACE Nationwide Permit 14 with pre-construction notification; Project Number SWF–2005–00058) is available by contacting TxDOT at the address provided above or can be viewed at the project Web site. The Decision Document for Nationwide Permit 14 along with the Supplemental Decision Document for Nationwide Permit 14 for regional conditions are also available by contacting TxDOT at the address provided above or can be viewed at the project Web site. The USACE involvement with this project is limited to approving the Section 404 permit for the project.

This notice applies to all Federal agency decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act of 1973 [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; and Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470]; Archeological and Historic Preservation Act [16 U.S.C. 469].

6. *Social and Economic:* Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000(d) *et seq.*]; Farmland Protection Policy Act [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377] (Section 404, Section 401, Section 402, Section 319); Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; and Land and Water Conservation Fund [16 U.S.C. 4601–4604].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13175 Consultation and Coordination with Indian Tribal Government; E.O. 11514 Protection and Enhancement of Environmental Quality.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: July 20, 2011.

Salvador Deocampo,

District Engineer, Austin, Texas.

[FR Doc. 2011–18821 Filed 7–25–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee Public Subcommittee Meeting; Amendment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; amendment.

SUMMARY: This notice amends FMCSA's June 29, 2011, notice announcing July and August, 2011, subcommittee meetings of the Agency's Motor Carrier Safety Advisory Committee (MCSAC). Because a final decision on the location for the August 1–2, 2011, MCSAC subcommittee meeting had not been made at the time the June 29, 2011, notice was published, the Agency amends the previous notice to provide that information. Also, in consideration of the complexity of the technical issues discussed by the subcommittee during the July 11–12, 2011, meeting, the meeting time is being extended on the first day of the August 1–2, 2011, meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, (202) 385–2395, *mcsac@dot.gov.*

TIMES AND DATES: The meeting will be held on Monday and Tuesday, August 1 and 2, 2011, from 8 a.m. to 5 p.m. (E.T.) at the Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202, in meeting rooms Crystal V and VI.

SUPPLEMENTARY INFORMATION: The FMCSA's June 29, 2011, notice (76 FR 38268) indicated that the Agency's MCSAC would hold two subcommittee meetings with the first meeting to be held on July 11–12, 2011, at the Hilton Alexandria Old Town. The notice indicated the second meeting would be held on August 1 and 2, 2011, from noon to 5 p.m. on August 1 and 8 a.m. to 5 p.m. on August 2. The notice did not provide a location for the August 1–2, 2011, meeting.

FMCSA announces the location of the August 1–2, 2011, meeting and extends the meeting time. The meeting will be held at the Sheraton Crystal City in Arlington, VA. The meeting will begin at 8 a.m. and end at 5 p.m. on both days.

Issued on: July 20, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–18891 Filed 7–25–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2011–0143]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt nineteen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective July 26, 2011. The exemptions expire on *July 26, 2013.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On June 2, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from nineteeen individuals and requested comments from the public (76 FR 32012). The public comment period closed on July 5, 2011, and one comment was received.

FMCSA has evaluated the eligibility of the nineteen applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' [(49 CFR 391.41(b)(3))].

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These nineteen applicants have had ITDM over a range of 1 to 30 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the June 2, 2011, **Federal Register** notice. They will not be repeated in this notice.

Discussion of Comment

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it had reviewed the driving records for Brion T. Maguire and Harry L. Claycomb and is in favor of granting them a Federal diabetes exemption.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the nineteen exemption applications, FMCSA exempts Russell L. Bassett, Teddy L. Beach, Franklin L. Bell, Jeffery F. Borelli, Dale E. Burke, James S. Campbell, Harry L. Claycomb, Boyd L. Croshaw, Gail R. Gehrke, Derek R. Haagensen, Martin J. Johnson, Shelley Kneeland, Jr., Brion T. Maguire, Mark D. McKee, Todd J. Smith, John J. Steigauf, Andrew C. Winsberg, Nathan E. Woodin and Vicky A. Yernesek from the ITDM standard in 49 CFR 391.41(b)(3), subject

to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: July 20, 2011.

Larry W. Minor,

Associate Administrator Office of Policy.

[FR Doc. 2011–18892 Filed 7–25–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7918; FMCSA–2001–9561; FMCSA–2003–14504; FMCSA–2005–20027; FMCSA–2007–2663; FMCSA–2007–25246; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2009–0054; FMCSA–2009–0086; FMCSA–2009–0121]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 26 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 8, 2011. Comments must be received on or before August 25, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–1998–4334; FMCSA–2000–7918; FMCSA–2001–9561; FMCSA–2003–14504; FMCSA–2005–20027; FMCSA–2007–2663; FMCSA–2007–25246; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2009–0054; FMCSA–2009–0086; FMCSA–2009–0121, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 26 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 26 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Jean-Pierre G. Brefort
James T. Butler, Jr.
Paul W. Dawson
Jay E. Finney
Steven A. Garrity
Waylon E. Hall
Gary D. Hallman
William P. Holloman
John R. Hughes
Edward J. Kasper
Jeffrey M. Kimsey
Richard L. Leonard
Jorge Lopez
Craig R. Martin
Michael A. Mitchell
William F. Nickel, V
Robert D. Porter
Thomas G. Raymond
Robert A. Reyna
Tim M. Seavy
Lawrence E. Stabeno
Randy D. Stanley
Lee T. Taylor
Scott A. Taylor
James M. Tayman, Sr.
Steven L. Thomas

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under

49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 26 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517, 65 FR 66286; 66 FR 13825; 66 FR 30502; 66 FR 33990; 66 FR 41654; 66 FR 41656; 68 FR 10300; 68 FR 19598; 68 FR 33570; 68 FR 44837; 70 FR 2701; 70 FR 7546; 70 FR 16887; 70 FR 25878; 70 FR 41811; 72 FR 180; 72 FR 8417; 72 FR 9397; 72 FR 21313; 72 FR 28093; 72 FR 32703; 72 FR 32705; 72 FR 36099; 72 FR 39879; 72 FR 40362; 72 FR 52419; 74 FR 11988; 74 FR 19267; 74 FR 21427; 74 FR 23472; 74 FR 26461; 74 FR 26466; 74 FR 28094; 74 FR 34395; 74 FR 34630). Each of these 26 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by *August 25, 2011.*

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 26 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: July 20, 2011.

Larry W. Minor,

Associate Administrator Office of Policy.

[FR Doc. 2011–18890 Filed 7–25–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9258; FMCSA–2005–21254; FMCSA–2009–0121]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 8 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 10, 2011. Comments must be received on or before August 25, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2001–9258; FMCSA–2005–21254; FMCSA–2009–0121, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://*

www.regulations.gov at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202)-366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 8 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 8 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Kenneth D. Daniels
Donald M. Jenson
Dennis D. Lesperance
Dean A. Maystead
Donald L. Murphy
Carl V. Murphy, Jr.
Mark A. Pirl
Thomas D. Reynolds

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) By an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 8 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 17743; 66 FR 33990; 68 FR 35772; 70 FR 30999; 70 FR 33937; 70 FR 46567; 72 FR 32705; 72 FR 40359; 74 FR 26461; 74 FR 26464; 74 FR 34074; 74 FR 34630). Each of these 8 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by August 25, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 8 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: July 20, 2011.

Larry W. Minor,

Associate Administrator Office of Policy.

[FR Doc. 2011–18888 Filed 7–25–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, United States Department of Transportation.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: Section 5334(h) of the Federal Transit Laws, as codified, 49 U.S.C. 5301, *et seq.,* permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Northern Indiana Commuter Transportation District (NICTD) intends to transfer a parcel of property to the National Railroad Passenger Corporation (Amtrak), a corporation organized under the Rail Passenger Service Act, recodified 48 U.S.C. 24101 *et seq.,* and the laws of the District of Columbia, and having its principal place of business at 60 Massachusetts Avenue, NE., Washington, DC 20002. Northern Indiana Commuter Transportation District currently owns the land. The property, which consists of 1.97 acres, is located at Amtrak South Bend Station, 2702 West Washington Street, South Bend, Indiana, 46628 and consists of approximately the following components: Station and Parking Lot Area of 1.13 acres, Undeveloped Land of 0.84 acres and Station Building of 5,890 square feet (the ''Property''). NICTD wishes to transfer ownership of the Property to Amtrak for Amtrak's continued use as their passenger station in South Bend, Indiana. Amtrak has used the Property since 1975 and wishes to continue to use it for an Amtrak station. NICTD has not used it since 1992. Because Amtrak seeks to make major renovations to the station to make it more usable for their passengers and Amtrak is the only entity using the Property, NICTD seeks to relinquish ownership of the Property to Amtrak.

DATES: *Effective Date:* Any Federal agency interested in acquiring the facility must notify the FTA Region V Office of its interest by August 15, 2011.

ADDRESSES: Interested parties should notify the Regional Office by writing to Marisol R. Simon, Regional Administrator, Federal Transit Administration, 200 West Adams, Suite 320, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Cecelia Comito, Regional Counsel, at 312/353–2789.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. 5334(h) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. 49 U.S.C. 5334(h)(l).

Determinations

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. Section 5334(h)(l)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing facility, FTA will make certain that the other requirements specified in 49 U.S.C. Section 5334(h)(1)(A) through (C) are met before permitting the asset to be transferred.

The property, which consists of approximately 1.97 acres, is located at Amtrak South Bend Station, 2702 West Washington Street, South Bend, Indiana, 46628 and consists of approximately the following components: Station and Parking Lot Area of 1.13 acres, Undeveloped Land of 0.84 acres and Station Building of 5,890 square feet (the ''Property'').

The Northern Indiana Commuter Transportation District (NICTD) requests permission to transfer title to approximately 1.97 acres of property, with a parking lot and one (1) Building approximately 5900 square feet in South Bend, Indiana, to the National Railroad Passenger Corporation (Amtrak) free of charge for continued use as the Amtrak Rail Passenger Station for South Bend. This property was acquired by NICTD in 1989 through NICTD's purchase of the passenger assets of the bankrupt Chicago, South Shore and South Bend Railroad; the purchase was financed, in part, through FTA project IN–03–0061. At the time of the purchase of the passenger assets, this property served as NICTD's South Bend Station. This property is no longer needed by NICTD, as NICTD moved its South Bend Station to the South Bend Regional Airport in November 1992. The property has also been used by Amtrak as its South Bend Station since 1975, and since 1992, NICTD has leased this property to Amtrak for a nominal fee. Amtrak now finds that this station is aging and requires extensive rebuilding to remain a viable station and Amtrak wishes to stay in this location. However, since NICTD no longer uses this station and has determined that it will never use it again, it is in the best interest of all parties to transfer title of this property to Amtrak.

This property is located at 2702 West Washington Street in South Bend, Indiana, 46628, and is bounded on the north by Washington Street, on the east by Meade Street, on the south by the Norfolk Southern Railway tracks and on the west by the SouthShore Freight Railroad's Bendix Yard. On the property is an asphalt parking lot with a capacity for approximately thirty (30) automobiles. The building is a one story, cement block building constructed in 1970 that has a waiting room, a ticket office and an enclosed, secure area to store checked baggage.

Issued on June 24, 2011.

Marisol Simón,

Regional Administrator.

[FR Doc. 2011–18783 Filed 7–25–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Privacy Act of 1974, as Amended

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

ACTION: Adoption of Privacy Act Systems of Records.

SUMMARY: The Office of the Comptroller of the Currency (OCC), a bureau of the Department of Treasury, is publishing this notice to notify all interested parties, pursuant to section (e)(4) of the Privacy Act (5 U.S.C. 552a(e)(4)), that the OCC hereby adopts the Privacy Act systems of records of the Office of Thrift Supervision (OTS). A list of the systems of the OTS can be found at 74 FR 31103, June 29, 2009, and can be updated with reference to 76 FR 7243 and 76 FR 7242, February 9, 2011.

DATES: *Effective Date:* July 21, 2011.

FOR FURTHER INFORMATION CONTACT: Roger Mahach, Chief Information Security and Privacy Officer, (202) 649–5830; Frank Vance, Jr., Disclosure Officer, Communications Division, (202) 874–4700; or, Kristin Merritt, Special Counsel, Administrative and Internal Law Division, (202) 874–4460, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Pursuant to section 313 of Title III of the Dodd Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203–July 21, 2010 (the Act), the OTS will be abolished. On July 21, 2011 (the designated transfer date under section 1062 of the Act), pursuant to section 312 of the Act, the OTS will be integrated into the OCC. Following this integration, all functions of the OTS and the Director of the OTS that are related to Federal savings associations (and not otherwise transferred to another agency pursuant to the Act) will be transferred to the OCC and the Comptroller of the Currency. This includes all rulemaking authority of the OTS and the Director of the OTS, respectively, relating to savings associations.

Also, pursuant to section 312 of the Act, the OCC and the Comptroller succeed in all powers, authorities, rights and duties that were vested in the OTS and the Director of the OTS on the day before the transfer date relating to the functions transferred. Thus, 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, including national banks and Federal savings associations, and other persons subject to its jurisdiction. 12 U.S.C. 1 (as amended by section 324 of the Act). The OCC anticipates adopting and publishing in the **Federal Register** all changes to the OTS' Privacy Act systems of records necessary for the OCC to carry out the provisions of 12 U.S.C. 1 *et seq.* (as amended), and the Act, and all other laws within the jurisdiction of the OCC.

Dated: July 18, 2011.

Veronica Marco,

Acting Deputy Assistant Secretary for Privacy, Transparency and Records.

[FR Doc. 2011–18885 Filed 7–25–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure(s)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to waiver of 60-month bar on reconsolidation after disaffililiation and procedure to eliminate impediments to e-filing consolidated returns and reduce reporting requirements.

DATES: Written comments should be received on or before September 26, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Joel Goldberger at (202) 927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Revenue Procedure 2002–32, Waiver of 60–Month Bar on Reconsolidation after Disaffiliation; Revenue Procedure 2006–21, to Eliminate Impediments to E–Filing Consolidated Returns and Reduce Reporting Requirements.

OMB Number: 1545–1784.

Revenue Procedure Numbers: 2002–32 and 2006–21.

Abstract: Revenue Procedure 2002–32 provides qualifying taxpayers with a waiver of the general rule of § 1504(a)(3)(A) of the Internal Revenue Code barring corporations from filing consolidated returns as a member of a group of which it had been a member for 60 months following the year of disaffiliation; Revenue Procedure 2006–21 modifies Rev. Proc. 89–56, 1989–2 C.B. 643, Rev. Proc. 90–39, 1990–2 C.B. 365, and Rev. Proc. 2002–32, 2002–20 IRB p.959, to eliminate impediments to the electronic filing of Federal income tax returns (e-filing) and to reduce the reporting requirements in each of these revenue procedures.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated number of respondents: 20.

The estimated annual burden per respondent varies from 2 hours to 8 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated total annual reporting burden: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 8, 2011.

Yvette B. Lawrence,

OMB Reports Clearance Officer.

[FR Doc. 2011–18768 Filed 7–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for A Notice

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to election to defer net experience loss in a multiemployer plan.

DATES: Written comments should be received on or before September 26, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Election to Defer Net Experience Loss in a Multiemployer Plan.

OMB Number: 1545–1935.

Notice Number: Notice 2005–40.

Abstract: This notice describes the election that must be filed by an eligible multiemployer plan's enrolled actuary to the Service in order to defer a net experience loss. The notice also describes the notification that must be given to plan participants and beneficiaries, to labor organizations, to contributing employers and to the Pension Benefit Guaranty Corporation within 30 days of making an election with the Service and the certification that must be filed if a restricted amendment is adopted.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved new collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 12.

Estimated Average Time per Respondent: 80 hours.

Estimated Total Annual Burden Hours: 960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–18779 Filed 7–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1125–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1125–A, Cost of Goods Sold.

DATES: Written comments should be received on or before September 26, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, (202) 927–9368, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cost of Goods Sold.

OMB Number: 1545–XXXX.

Form Number: Form 1125–A.

Abstract: During a re-design of Form 1120 U.S. Corporation Income Tax Return, related to the inclusion of ''Merchant Card Receipts'', it was deemed to be more efficient to present the data required to report ''Cost of goods sold'' on a new form. This new form, 1125–A, would be attached to form 1120, as well as to other forms that require this information.

Current Actions: This new form is being submitted for OMB approval.

Type of Review: New collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 3,560,000.

Estimated Time per Respondent: 8 hours 47 minutes.

Estimated Total Annual Burden Hours: 31,185,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 18, 2011.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2011–18781 Filed 7–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1125–E

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1125–E, Compensation of Officers.

DATES: Written comments should be received on or before September 26, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, (202) 927–9368, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Compensation of Officers.

OMB Number: 1545–XXXX.

Form Number: Form 1125–E.

Abstract: During a re-design of Form 1120 U.S. Corporation Income Tax Return, related to the inclusion of ''Merchant Card Receipts'', it was deemed to be more efficient to capture the data required to report ''Compensation of Officers'' on a new form. This new form, 1125–E, would be attached to form 1120, as well as to other forms that require this information.

Current Actions: This new form is being submitted for OMB approval.

Type of Review: New collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 3,000,000.

Estimated Time per Respondent: 4 hours 30 minutes.

Estimated Total Annual Burden Hours: 12,900,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 18, 2011.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2011–18782 Filed 7–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–A, U.S. Information Return-Trust Accumulation of Charitable Amounts.

DATES: Written comments should be received on or before September 26, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: U.S. Information Return-Trust Accumulation of Charitable Amounts.

OMB Number: 1545–0094.

Form Number: 1041–A.

Abstract: Form 1041–A is used to report the information required in Internal Revenue Code section 6034 concerning accumulation and distribution of charitable amounts. The data is used to verify the amounts for which a charitable deduction was allowed are used for charitable purposes.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, and individuals.

Estimated Number of Respondents: 119,936.

Estimated Time per Respondent: 36 hrs, 40 minutes.

Estimated Total Annual Burden Hours: 4,396,854.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 19, 2011.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2011–18780 Filed 7–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to new technologies in retirement plans.

DATES: Written comments should be received on or before September 26, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: New Technologies in Retirement Plans.

OMB Number: 1545–1632.

Regulation Project Number: REG–118662.98, T.D. 8873 (final)

Abstract: This document contains amendments to the regulations governing certain notices and consents required in connection with distributions from retirement plans. Specifically, these regulations set forth applicable standards for the transmission of those notices and consents through electronic media and modify the timing requirements for providing certain distribution-related notices. The regulations provide guidance to plan sponsors and administrators by interpreting the notice and consent requirements in the context of the electronic administration of retirement plans. The regulations affect retirement plan sponsors, administrators, and participants.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 11,700,000.

Estimated Total Burden Hours: 477,563.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103. Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 7, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–18778 Filed 7–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to ten or more employer plans.

DATES: Written comments should be received on or before September 26, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Ten or More Employer Plan Compliance Information.

OMB Number: 1545–1795.

Regulation Project Number: REG–165868–01, (T.D. 9079).

Abstract: This document contains final regulations that provide rules regarding requirements for a welfare benefit fund that is part of a 10 or more employer plan. The regulations affect employers that provide welfare benefits to employees through a plan to which more than one employer contributes.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit or not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Total Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 30, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–18770 Filed 7–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Publication 3319

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Publication 3319, Low-Income Taxpayer Clinics 2012 Grant Application Package and Guidelines.

DATES: Written comments should be received on or before September 26, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of publication should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Low-Income Taxpayer Clinics 2012 Grant Application Package and Guidelines.

OMB Number: 1545–1648.

Publication Number: Publication 3319.

Abstract: Publication 3319 outlines requirements of the IRS Low-Income Taxpayer Clinics (LITC) program and provides instructions on how to apply for a LITC grant award. The IRS will review the information provided by applicants to determine whether to award grants for the Low-Income Taxpayer Clinics.

Current Actions: There are no changes being made to the publication at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not for-profit institutions.

Estimated Number of Respondents: 825.

Estimated Total Annual Burden Hours: 6,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 5, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–18772 Filed 7–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to residence rulings involving U.S. possessions.

DATES: Written comments should be received on or before September 26, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Residence Rulings Involving U.S. Possessions.

OMB Number: 1545–1930 .

Regulation Project Number: REG–159243–03 (T.D. 9248).

Abstract: This document contains final regulations that provide rules for determining bona fide residency in the following U.S. possessions: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands under sections 937(a) and 881(b) of the Internal Revenue Code.

Current Actions: There is no change to this final regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households or businesses or other for-profit organizations.

Estimated Number of Respondents: 75,000.

Estimated Total Burden Hours: 300,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 7, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–18775 Filed 7–25–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 76 Tuesday,

No. 143 July 26, 2011

Part II

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1190

Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way; Proposed Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1190

[Docket No. ATBCB 2011–04]

RIN 3014–AA26

Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board is proposing accessibility guidelines for the design, construction, and alteration of pedestrian facilities in the public right-of-way. The guidelines ensure that sidewalks, pedestrian street crossings, pedestrian signals, and other facilities for pedestrian circulation and use constructed or altered in the public right-of-way by state and local governments are readily accessible to and usable by pedestrians with disabilities. When the guidelines are adopted, with or without additions and modifications, as accessibility standards in regulations issued by other federal agencies implementing the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Architectural Barriers Act, compliance with the accessibility standards is mandatory.

DATES: Submit comments by November 23, 2011. Hearings will be held on the proposed guidelines on the following dates:

1. September 12, 2011, 9:30 to 11:30 a.m., Dallas, TX.
2. November 9, 2011, 9:30 to 11:30 a.m., Washington, DC.

ADDRESSES: Submit comments by any of the following methods:

- *Federal eRulemaking Portal:http://www.regulations.gov.* Follow the instructions for submitting comments. Regulations.gov ID for this docket is ATBCB–2011–0004.
- *E-mail: row@access-board.gov.* Include docket number ATBCB 2011–04 in the subject line of the message.
- *Fax:* 202–272–0081.
- *Mail or Hand Delivery/Courier:* Office of Technical and Informational Services, Access Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004–1111.

All comments will be posted without change to *http://www.regulations.gov,* including any personal information provided.

The hearing locations are:

1. Dallas: Sheraton Dallas (San Antonio A Ballroom), 400 North Olive Street, Dallas, TX 75201.
2. Washington, DC: Access Board Conference Room, 1331 F Street, NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004–1111. Telephone (202) 272–0025 (voice) or (202) 272–0028 (TTY). E-mail address *row@access-board.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Proposed Guidelines With Figures

The proposed guidelines will be codified as an appendix to 36 CFR part 1190. In the past, the Architectural and Transportation Barriers Compliance Board (Access Board) submitted ''camera ready'' copy (*i.e.,* images) of its guidelines to the **Federal Register** for the appendices since the guidelines included figures that illustrate the requirements in the guidelines. The appendices were not word searchable when viewed online because they are images. After discussions with the Office of the Federal Register, the Access Board has decided to submit the proposed guidelines as a Word document with only one image, the International Symbol of Accessibility (Figure R411), so the appendix will be word searchable when viewed online. A copy of the proposed guidelines with figures is available on the Access Board Web site at: *http://www.access-board.gov/prowac/nprm.htm.* Except for the International Symbol of Accessibility (Figure R411), the figures are for illustration purposes only and do not establish requirements. The copy of the proposed guidelines on the Access Board Web site also sets out advisory sections in shaded boxes, and indents subsections under the main sections.

Introduction

The Access Board is an independent federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792).[1] The Access Board is responsible for developing accessibility guidelines for the design, construction, and alteration of facilities to ensure that they are readily accessible to and usable by individuals with disabilities. The Access Board's guidelines play an important part in the implementation of three laws that require newly constructed and altered facilities to be accessible to individuals with disabilities: the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Architectural Barriers Act. As further discussed under the Statutory and Regulatory Background, these laws require other federal agencies to issue regulations which include accessibility standards for the design, construction, and alteration of facilities. The regulations issued by the other federal agencies to implement these laws adopt, with or without additions and modifications, the Access Board's guidelines as accessibility standards. When the Access Board's guidelines are adopted, with or without additions and modifications, as accessibility standards in regulations issued by other federal agencies implementing these laws, compliance with the accessibility standards is mandatory.

Statutory and Regulatory Background

Americans With Disabilities Act

The Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) is a federal civil rights law that prohibits discrimination against individuals with disabilities. Title II of the Americans with Disabilities Act covers state and local governments.[2] The Department of Justice is responsible for issuing regulations to implement Title II of the Americans with Disabilities Act, except for the public transportation parts.[3] The

[1] The Access Board consists of 13 members appointed by the President from the public, a majority of which are individuals with disabilities, and the heads of 12 federal agencies or their designees whose positions are Executive Level IV or above. The federal agencies are: The Departments of Commerce, Defense, Education, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, Transportation, and Veterans Affairs; General Services Administration; and United States Postal Service.

[2] Other titles of the Americans With Disabilities Act cover employers (Title I), private entities that own, lease, or operate places of public accommodation and commercial facilities (Title III), and telecommunications (Title IV). This preamble focuses on Title II because pedestrian facilities in the public right-of-way are constructed and altered by state and local governments.

[3] Title II of the Americans with Disabilities Act contains two subtitles. Subtitle A applies to all state and local government programs, services, and activities. Subtitle B contains two parts. Subtitle B, part I applies to designated public transportation provided by state and local governments by bus, rail, or other conveyance (other than aircraft or intercity or commuter rail) as a general or special service (including charter service) to the general public on a regular and continuing basis. Subpart B, part II applies to public transportation provided by the National Railroad Passenger Corporation and commuter authorities by intercity and commuter rail. The Department of Justice is responsible for issuing regulations to implement Subtitle A of Title II, except for matters within the scope of authority of the Department of Transportation under Parts I and II of Subtitle B of Title II. See 42 U.S.C. 12134. The Department of Transportation is responsible for issuing regulations to implement Parts I and II of

regulations issued by the Department of Justice include accessibility standards for the design, construction, and alteration of facilities (other than facilities used in the provision of public transportation covered by regulations issued by the Department of Transportation).[4] The Department of Justice's accessibility standards adopt, with additions and modifications, the Access Board's current guidelines, which are discussed below under the Need for Rulemaking.[5] See 28 CFR 35.104 and 35.151.

The Department of Transportation is responsible for issuing regulations to implement the public transportation parts of Title II of the Americans with Disabilities Act.[6] The regulations issued by the Department of Transportation include accessibility standards for the design, construction, and alteration of facilities used in the provision of public transportation covered by the public transportation parts of Title II of the Americans with Disabilities Act. The Department of Transportation's accessibility standards adopt, with additions and modifications, the Access Board's current guidelines, which are discussed below under the Need for Rulemaking. See 49 CFR 37.9 and Appendix A to 49 CFR part 37.

The Department of Justice is responsible for overall enforcement of Title II of the Americans with Disabilities Act. The Department of Justice has designated the Department of Transportation as the federal agency responsible for investigating complaints and conducting compliance reviews ''relating to programs, services, and regulatory activities relating to transportation, including highways.'' See 28 CFR 35.190(b)(8).

Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act (29 U.S.C. 794) (hereinafter referred to as ''Section 504'') prohibits discrimination against individuals with disabilities under any program or activity receiving federal financial assistance. The term ''program or activity'' includes all the operations of a state or local government entity that receives federal financial assistance directly or indirectly from the federal government. See 29 U.S.C. 794(b). Each federal agency that provides federal financial assistance is responsible for issuing regulations to implement Section 504 that are consistent with requirements established by the Department of Justice. See Executive Order 12250 in Appendix A to 28 CFR part 41. The Department of Justice requires facilities designed, constructed, or altered by recipients of federal financial assistance to be accessible to individuals with disabilities. See 28 CFR 41.58.

The Department of Transportation provides federal financial assistance to state and local governments for the development of transportation networks, including pedestrian facilities in the public right-of-way.[7] The regulations issued by the Department of Transportation to implement Section 504 require facilities designed, constructed, or altered by recipients of federal financial assistance from the Department to comply with accessibility standards included in the Department's regulations implementing the public transportation parts of Title II of the Americans with Disabilities Act, or the Uniform Federal Accessibility Standards. See 49 CFR 27.3. As discussed above, the accessibility standards included in the Department of Transportation regulations implementing the public transportation parts of Title II of the Americans with Disabilities Act adopt, with additions and modifications, the Access Board's current guidelines, which are discussed below under the Need for Rulemaking. See 49 CFR 37.9 and Appendix A to 49 CFR part 37.

The Department of Transportation is responsible for investigating complaints and conducting compliance reviews under Section 504 relating to recipients of federal financial assistance from the Department. See 49 CFR 27.121 and 27.123.

Architectural Barriers Act

The Architectural Barriers Act (42 U.S.C. 4151 *et seq.*) requires certain facilities financed with federal funds to be accessible to individuals with disabilities. The Architectural Barriers Act covers facilities financed in whole or part by a federal grant or loan where the federal agency that provides the grant or loan is authorized to issue standards for the design, construction, or alteration of the facilities.[8] See 42 U.S.C. 4151(3). The General Services Administration is required to issue accessibility standards for facilities covered by the Architectural Barriers Act.[9] See 42 U.S.C. 4156. The accessibility standards issued by the General Services Administration adopt, without any additions or modifications, the Access Board's current guidelines, which are discussed below under the Need for Rulemaking. See 41 CFR 102–76.65.

The Access Board is responsible for enforcing the Architectural Barriers Act. See 29 U.S.C 792(b)(1) and (e).

Need for Rulemaking

This section discusses the Congressional findings in the Americans with Disabilities Act that establish the need for accessibility guidelines, the Access Board's current accessibility guidelines, and why the Access Board is proposing to issue accessibility guidelines for pedestrian facilities in the public right-of-way.

Subtitle B of Title II. See 42 U.S.C. 12149 and 12164.

[4] Subtitle A of Title II of the Americans with Disabilities Act requires that the regulations issued by the Department of Justice include accessibility standards that are ''consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.'' 42 U.S.C. 12134(c). The accessibility standards issued by the Department of Justice can include additional or modified requirements provided they are consistent with the Access Board's guidelines.

[5] In September 2010, the Department of Justice issued regulations with revised accessibility standards for Titles II and III of the Americans with Disabilities Act (DOJ 2010 Standards). See 75 FR 56164 (September 15, 2010). Compliance with the DOJ 2010 Standards is required on or after March 15, 2012. State and local governments are permitted to comply with earlier standards (DOJ 1991 Standards without the elevator exception or UFAS) or the DOJ 2010 Standards between September 15, 2010 and March 14, 2012. Additional information on the applicable standards and their effective dates is available on the Department of Justice Web site at: *http://www.ada.gov/revised_effective_dates-2010.htm.* The DOJ 2010 Standards are available on the Department of Justice Web site at: *http://www.ada.gov/2010ADAstandards_index.htm.*

[6] Parts I and II of Subtitle B of Title II of the Americans with Disabilities Act require that the regulations issued by the Department of Transportation include accessibility standards that are ''consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.'' 42 U.S.C. 12149(b) and 12163. The accessibility standards issued by the Department of Transportation can include additional or modified requirements provided they are consistent with the Access Board's guidelines.

[7] See Department of Transportation ''Policy Statement on Bicycle and Pedestrian Accommodation Regulations and Recommendations'' at: *http://www.dot.gov/affairs/2010/bicycle-ped.html.*

[8] The Architectural Barriers Act also covers facilities constructed, altered, or leased by federal agencies; and facilities constructed or altered by the Washington Metropolitan Area Transit Authority. See 42 U.S.C. 4151(1), (2), and (4).

[9] The accessibility standards issued by the General Services Administration apply to all facilities covered by the Architectural Barriers Act, except for postal, military, and residential facilities. The United States Postal Service is responsible for issuing accessibility standards for postal facilities; the Department of Defense is responsible for issuing accessibility standards for military facilities; and the Department of Housing and Urban Development is responsible for issuing accessibility standards for residential facilities. See 42 U.S.C. 4153, 4154, and 4154a.

Congressional Findings of Discrimination

The Americans with Disabilities Act was enacted in 1990 by overwhelming bipartisan majorities in the House of Representatives (377–28) and in the Senate (91–6).[10] Congress compiled an extensive record of the discrimination experienced by individuals with disabilities in critical areas such as employment, public accommodations, state and local government services, and transportation. Congress found that ''despite some improvements such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.'' 42 U.S.C. 12101(a)(2). Among the forms of discrimination that Congress found to be a continuing problem are ''the discriminatory effects of architectural, transportation, and communication barriers.'' 42 U.S.C. 12101(a)(5). Congress found that ''the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.'' 42 U.S.C. 12101(a)(9). Congress declared that ''the Nation's proper goals regarding individuals with disabilities are to ensure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.'' 42 U.S.C. 12101(a)(8).

The purpose of the Americans with Disabilities Act is ''to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities'' and ''to provide clear, strong, and consistent, enforceable standards addressing discrimination against individuals with disabilities.'' 42 U.S.C. 12101(b)(1) and (2). Congress directed the Access Board to supplement the accessibility guidelines developed earlier for the Architectural Barriers Act to include ''additional requirements, consistent with this Act, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible in terms of architecture and design, transportation, and communication, to individuals with disabilities.'' 42 U.S.C. 12204(b).

Current Guidelines Developed Primarily for Buildings and Facilities on Sites

The Access Board's current accessibility guidelines were issued in 2004 and are known as the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (hereinafter referred to as ''2004 ADA and ABA Accessibility Guidelines'').[11] 69 FR 44083 (July 23, 2004). The 2004 ADA and ABA Accessibility Guidelines revised and updated the Americans with Disabilities Act Accessibility Guidelines, which were issued by the Access Board in 1991 (hereinafter referred to as ''1991 ADAAG''). 56 FR 35408 (July 26, 1991). The requirements in the 1991 ADAAG and 2004 ADA and ABA Accessibility Guidelines were developed primarily for buildings and facilities on sites.[12] Some of the requirements can be readily applied to pedestrian facilities in the public right-of-way. However, other requirements need to be adapted for pedestrian facilities in the public right-of-way.

Proposed Guidelines Developed Specifically for Pedestrian Facilities in the Public Right-of-Way

The proposed guidelines are developed specifically for pedestrian facilities in the public right-of-way and address conditions and constraints that exist in the public right-of-way. As discussed below under the Major Issues, the requirements in the proposed guidelines make allowances for typical roadway geometry and permit flexibility in alterations to existing facilities where existing physical constraints make it impractical to fully comply with new construction requirements. The proposed guidelines also include requirements for elements and facilities that exist only in the public right-of-way such as pedestrian signals and roundabouts.

Rulemaking History

The Access Board began developing accessibility guidelines for pedestrian facilities in the public right-of-way shortly after the Americans with Disabilities Act was enacted in 1990. Proposed guidelines for state and local government facilities, including pedestrian facilities in the public right-of-way, were initially issued in 1992. 57 FR 60612 (December 21, 1992). Interim guidelines were issued in 1994. 59 FR 31676 (June 20, 1994). Final guidelines were issued in 1998, but did not include requirements for pedestrian facilities in the public right-of-way because comments submitted on the proposed and interim guidelines demonstrated a need for additional research, as well as education and outreach. 63 FR 2000 (January 13, 1998).

The Access Board subsequently sponsored research on accessible pedestrian signals and pedestrian pushbuttons, detectable warning surfaces, and pedestrian facilities at roundabouts.[13] The Access Board also produced a series of videos, a design guide, and an accessibility checklist for pedestrian facilities in the public right-of-way, and conducted training programs around the country. The Access Board coordinated its work with organizations representing state and local government transportation officials and other transportation industry professionals, including the American Association of State Highway and Transportation Officials, Institute of Transportation Engineers, National Committee on Uniform Traffic Control Devices, and Transportation Research Board.

The Access Board established a federal advisory committee in 1999 to recommend accessibility guidelines for pedestrian facilities in the public right-of-way. The advisory committee included representatives of state and local governments, the transportation industry, disability organizations, and

[10] 101 Cong. Rec. H4629 and 4630 (July 12, 1990); 101 Cong. Rec. S9695 (July 13, 1990).

[11] The 2004 ADA and ABA Accessibility Guidelines are codified in 36 CFR part 1191 and consist of six appendices:

Appendix A is the Table of Contents to the guidelines;

Appendix B contains ADA Chapters 1 and 2, which include application and scoping requirements for the design, construction, and alteration of facilities covered by the Americans with Disabilities Act;

Appendix C contains ABA Chapters 1 and 2, which include application and scoping requirements for the design, construction, and alteration of facilities covered by the Architectural Barriers Act;

Appendix D contains Chapters 3 through 10, which include common technical requirements for the design, construction, and alteration of facilities covered by the Americans with Disabilities Act or the Architectural Barriers Act;

Appendix E contains the index of terms and list of figures included in the guidelines; and

Appendix F contains additions and modifications to the guidelines issued by the Department of Transportation.

The DOJ 2010 Standards and the Department of Transportation standards for transportation facilities used in the provision of transportation services covered by the transportation parts of Title II of the ADA and facilities covered by Section 504 adopt Appendices B and D, with additions and modifications. The General Services Administration standards for facilities covered by the Architectural Barriers Act adopt Appendices C and D, without additions and modifications.

[12] The term ''site'' is defined in the 1991 ADAAG (see 3.5) and 2004 ADA and ABA Accessibility Guidelines (see 106.5 and F106.5) as a ''parcel of land bounded by a property line or a designated portion of a public right-of-way.''

[13] The reports on the research sponsored by the Access Board and technical assistance materials on accessible design of pedestrian facilities in the public right-of-way are available on the Access Board Web site at: *http://www.access-board.gov/prowac/index.htm.*

other interested groups.[14] The advisory committee provided significant sources of expertise and produced consensus recommendations for accessibility guidelines for pedestrian facilities in the public right-of-way. The advisory committee presented its recommendations, ''Building a True Community: Final Report of the Public Rights-of-Way Access Advisory Committee'', to the Access Board in 2001.[15]

The Access Board developed draft accessibility guidelines for pedestrian facilities in the public right-of-way based on the advisory committee's recommendations, and made the draft guidelines available for public review and comment in 2002.[16] 67 FR 41206 (June 17, 2002). The Access Board revised the draft guidelines in 2005 and made the revised draft guidelines available for public review to facilitate the gathering of data for a regulatory assessment of the potential costs and benefits of the guidelines. 70 FR 70734 (November 23, 2005). The Access Board entered into an interagency agreement with the Volpe National Transportation Systems Center (Volpe Center) to gather data and prepare cost estimates for the regulatory assessment.[17]

Major Issues

Transportation officials who commented on the 2002 draft guidelines raised some major issues that are addressed below.

Alterations to Existing Facilities

The draft guidelines required alterations to existing facilities to comply with the requirements for new construction to the maximum extent feasible. Most of the improvements in the public right-of-way involve alterations to existing facilities. Transportation officials noted that the meaning of the term ''to the maximum extent feasible'' was not clear and wanted additional guidance on how to apply the guidelines when existing facilities are altered.

The proposed guidelines clarify that where elements, spaces, or facilities are altered, each altered element, space, or facility within the scope of the project must comply with the applicable requirements for new construction (see R202.3). The phrase ''within the scope of the project'' is intended to focus on whether the alteration project presents an opportunity to design the altered element, space, or facility in an accessible manner. It is not intended for additional work to be done outside the scope of the project. For example, if an alteration project involves only installing pedestrian signals at existing intersections and there are no detectable warning surfaces on the curb ramps at the intersections, the proposed guidelines would require accessible pedestrian signals and pedestrian pushbuttons to be provided at the intersections because they are within the scope of the project, but would not require detectable warning surfaces to be provided on the curb ramps because they are not within the scope of the project. The proposed guidelines also clarify that where elements are altered or added to existing facilities but the pedestrian circulation path to the altered or added elements is not altered, the pedestrian circulation path is not required to comply with the proposed requirements for pedestrian access routes (see R202.1). For example, if a new bench is installed on a sidewalk that has a cross slope exceeding 2 percent, the sidewalk is not required to be altered to reduce the cross slope because the bench is installed on the sidewalk.

In addition, the proposed guidelines recognize that it is not always possible for altered elements, spaces, or facilities to fully comply with new construction requirements because of existing physical constraints. Where existing physical constraints make it impracticable for altered elements, spaces, or facilities to fully comply with the requirements for new construction, compliance is required to the extent practicable within the scope of the project (see R202.3.1). Existing physical constraints include, but are not limited to, underlying terrain, right-of-way availability, underground structures, adjacent developed facilities, drainage, or the presence of a notable natural or historic feature. The proposed guidelines permit flexibility in alterations to existing facilities where needed.

Existing Facilities That Are Not Altered

Transportation officials expressed concern about application of the draft guidelines to existing facilities that are not altered. The proposed guidelines clarify that the guidelines do not address existing facilities unless they are included within the scope of an alteration undertaken at the discretion of a covered entity (see R101.2).

The Department of Justice regulations implementing Title II of the Americans with Disabilities Act contain requirements for state and local governments regarding program accessibility and existing facilities. See 28 CFR 35.150. The Department of Transportation regulations implementing Section 504 also contain requirements for recipients of federal financial assistance from the Department regarding compliance planning. See 49 CFR 27.11(c). The Access Board acknowledges that transportation officials are concerned about their obligations under the Title II of the Americans with Disabilities Act and Section 504 for existing facilities that are not altered, but the Access Board does not have the authority to address the application of the proposed guidelines to existing facilities that are not altered. When the Department of Justice and Department of Transportation conduct rulemaking to include accessibility standards for pedestrian facilities in the public right-of-way in regulations implementing Title II of the Americans with Disabilities Act and Section 504, they will address the application of the accessibility standards to existing facilities that are not altered. Comments concerning existing facilities that are not altered should be directed to the Department of Justice and Department of Transportation when they conduct rulemaking to include accessibility standards for pedestrian facilities in the public right-of-way in regulations implementing Title II of the Americans with Disabilities Act and Section 504.

[14] The following organizations were members of the advisory committee: AARP, America Walks, American Association of State Highway and Transportation Officials, American Council of the Blind, American Institute of Architects, American Public Transit Association, American Public Works Association, Association for Education and Rehabilitation of the Blind and Visually Impaired, Bicycle Federation of America, Californians for Disability Rights, Canadian Standards Association (Technical Committee on Barrier-Free Design), City of Birmingham (Department of Planning, Engineering and Permits), Council of Citizens with Low Vision International, Disability and Business Technical Assistance Centers, Disability Rights Education and Defense Fund, Federal Highway Administration, Hawaii Commission on Persons with Disabilities, Hawaii Department of Transportation, Institute of Traffic Engineers, Los Angeles Department of Public Works (Bureau of Street Services), Massachusetts Architectural Access Board, Municipality of Anchorage, National Center for Bicycling and Walking, National Council on Independent Living, National Federation of the Blind, New York State Department of Transportation, Paralyzed Veterans of America, Portland Office of Transportation, San Francisco Mayor's Office on Disability, State of Alaska, TASH, Texas Department of Transportation, and The Seeing Eye.

[15] The advisory committee report is available on the Access Board Web site at: *http://www.access-board.gov/prowac/commrept/index.htm.*

[16] The 2002 and 2005 draft guidelines and comments submitted on the 2002 draft guidelines are available on the Access Board Web site at: *http://www.access-board.gov/prowac/index.htm.*

[17] Volpe Center, ''Cost Analysis of Public Rights-of-Way Accessibility Guidelines'' (November 29, 2010). The document is available in the rulemaking docket (ATBCB–2011–0004) at: *http://www.regulations.gov.*

Allowances for Typical Roadway Geometry

The 1991 ADAAG and 2004 ADA and ABA Accessibility Guidelines specify a maximum running slope of 5 percent and maximum cross slope of 2 percent for walking surfaces on accessible routes. The draft guidelines adapted these requirements for pedestrian access routes in the public right-of-way and made an allowance for typical roadway geometry by permitting the grade of pedestrian access routes within sidewalks to equal the general grade established for the adjacent street or highway. The draft guidelines also permitted the cross slope of pedestrian access routes within midblock pedestrian street crossings and of curb ramps at midblock pedestrian street crossings to equal the street or highway grade.

Transportation officials recommended that additional allowances be made for typical roadway geometry. The proposed guidelines include the following allowances for typical roadway geometry:

- The grade of pedestrian access routes within sidewalks is permitted to equal the general grade established for the adjacent street or highway (see R302.5).
- A maximum cross slope of 5 percent is permitted for pedestrian access routes within pedestrian street crossings without yield or stop control where vehicles can proceed through the intersection without slowing or stopping (see R302.6.1).
- The cross slope of pedestrian access routes within midblock pedestrian street crossings is permitted to equal the street or highway grade (see R302.6.2).
- The cross slope of curb ramps, blended transitions, and turning spaces at pedestrian street crossings without yield or stop control where vehicles can proceed through the intersection without slowing or stopping, and at midblock pedestrian street crossings are permitted to equal the street or highway grade (see R304.5.3).
- Clear spaces required at accessible pedestrian signals and pedestrian pushbuttons and at other accessible elements are permitted to have a running slope consistent with the grade of the adjacent pedestrian access route (see R404.2).

A maximum grade of 5 percent and maximum cross slope of 2 percent are required otherwise for pedestrian access routes within sidewalks and pedestrian street crossings (see R302.5 and R302.6).

Overview of Proposed Guidelines

The proposed guidelines apply to pedestrian facilities in the public right-of-way. The proposed guidelines define the public right-of-way to mean ''public land or property, usually in interconnected corridors, that is acquired for or dedicated to transportation purposes'' (see R105.5). The proposed guidelines ensure that the following facilities for pedestrian circulation and use located in the public right-of-way are readily accessible to and usable by pedestrians with disabilities:

- Sidewalks, pedestrian overpasses and underpasses, and other pedestrian circulation paths, including requirements for pedestrian access routes, alternate pedestrian access routes when pedestrian circulation paths are temporarily closed, and protruding objects along or overhanging pedestrian circulation paths;
- Pedestrian street crossings, medians, and pedestrian refuge islands, including requirements for curb ramps or blended transitions, and detectable warning surfaces;
- Pedestrian street crossings at roundabouts, including requirements for detectable edge treatments where pedestrian crossing is not intended, and pedestrian activated signals at multi-lane pedestrian street crossings;
- Pedestrian street crossings at multi-lane channelized turn lanes at roundabouts and at other signalized intersections, including requirements for pedestrian activated signals;
- Pedestrian signals, including requirements for accessible pedestrian signals and pedestrian pushbuttons;
- Transit stops and transit shelters for buses and light rail vehicles, including requirements for boarding and alighting areas at sidewalk or street level, boarding platforms, and route signs;
- Pedestrian at-grade rail crossings, including requirements for flangeway gaps;
- On-street parking that is marked or metered, and passenger loading zones;
- Pedestrian signs, including requirements for visible characters on signs and alternative requirements for audible sign systems and other technologies;
- Street furniture for pedestrian use, including drinking fountains, public toilet facilities, tables, counters, and benches; and
- Ramps, stairways, escalators, handrails, doors, doorways, and gates.

Use of Mandatory Language in Proposed Guidelines

The proposed guidelines use the mandatory language ''shall'' and ''requirement'' because the guidelines are intended to be adopted, with or without additions and modifications, as accessibility standards in regulations issued by other federal agencies implementing Title II of the Americans with Disabilities Act, Section 504, and the Architectural Barriers Act. In this regard, the proposed guidelines are analogous to model codes. Model codes use mandatory language but compliance with model codes is not mandatory until they are adopted by a state or local government. When the Access Board's guidelines are adopted, with or without additions and modifications, as accessibility standards in regulations issued by other federal agencies implementing Title II of the Americans with Disabilities Act, Section 504, and the Architectural Barriers Act, compliance with the accessibility standards is mandatory. The other federal agencies will conduct separate rulemakings to include accessibility standards for pedestrian facilities in the public right-of-way in regulations implementing Title II of the Americans with Disabilities Act, Section 504, and the Architectural Barriers Act. The other federal agencies will establish the effective dates for compliance with the accessibility standards when they complete their rulemakings. The other federal agencies may permit use of the proposed guidelines as best practices pending the completion of their rulemakings. However, the proposed guidelines are not legally enforceable until adopted, with or without additions and modifications, as accessibility standards by other federal agencies in regulations implementing Title II of the Americans with Disabilities Act, Section 504, and the Architectural Barriers Act.

Impacts on State and Local Governments

When the proposed guidelines are adopted, with or without additions and modifications, as accessibility standards by other federal agencies in the regulations implementing Title II of the Americans with Disabilities Act, Section 504, and the Architectural Barriers Act, the accessibility standards will apply to units of state and local government that construct streets and highways.[18] For ease of reference, these state and local governmental units are referred to as

[18] Private entities that design, construct, or alter places of public accommodation or commercial facilities on sites are required to comply with accessibility standards included in regulations issued by the Department of Justice to implement Title III of the Americans with Disabilities Act. See 28 CFR 36.401 through 36.406. State or local laws may require sites with frontage on the public right-of-way or frontage that will revert to the public right-of-way to make frontage improvements in accordance with state or local standards which contain accessibility requirements that are similar to the proposed guidelines.

''state and local transportation departments'' in this preamble but may go by different names (*e.g.,* public works departments, or highway or streets departments) in their respective jurisdictions. State and local transportation departments may be required to comply with three accessibility standards. For example, a state or local transportation department that finances the design, construction, or alteration of a pedestrian facility in the public right-of-way with a federal grant or loan from the Department of Transportation would be required to comply with the accessibility standards issued by the Department of Justice in regulations implementing Title II of the Americans with Disabilities Act, the accessibility standards issued by the Department of Transportation in regulations implementing Section 504, and the accessibility standards issued by the General Services Administration in regulations implementing the Architectural Barriers Act. All three accessibility standards would be basically uniform because they adopt the proposed guidelines, but may vary to the extent that Department of Justice, Department of Transportation, and General Services Administration include additions or modifications to the proposed guidelines in their accessibility standards.

The Access Board prepared a regulatory assessment of the potential costs and benefits of the proposed guidelines. The regulatory assessment is available in the regulatory docket at *http://www.regulations.gov* and on the Access Board Web site at: *http://www.access-board.gov/prowac/index.htm.* The proposed guidelines are compared to a baseline to assess their potential costs and benefits. The baseline is how state and local transportation departments would design and construct pedestrian facilities in the public right-of-way in the absence of the proposed guidelines. All state transportation departments maintain design manuals and standard drawings for improvements in the public right-of-way.[19] Most local transportation department also maintain design manuals and standard drawings for improvements in the public right-of-way that are consistent with the design manuals and standard drawings maintained by their state transportation departments. State and local transportation departments use publications issued by the American Association of State and Highway Transportation Officials (AASHTO) in their design manuals and standard drawings, including the ''Policy on Geometric Design of Highways and Streets'' (2004) (commonly referred to as the ''AASHTO Green Book'') and the ''Guide for the Planning, Design, and Operation of Pedestrian Facilities'' (2004) which incorporate accessibility in the design of sidewalks and other pedestrian facilities.[20] The Federal Highway Administration as part of its stewardship and oversight responsibilities has also worked with state transportation departments to incorporate accessibility in their design manuals and standards drawings. The Federal Highway Administration has issued guidance that the accessibility standards in the Department of Justice regulations implementing Title II of the Americans with Disabilities Act and the Department of Transportation regulations implementing Section 504 ''are to be used to the extent feasible'' for the design of pedestrian facilities in the public right-of-way until new accessibility standards are adopted for these facilities.[21] The Federal Highway Administration has also issued guidance that the 2005 draft of the proposed guidelines for pedestrian facilities in the public right-of-way ''are the currently recommended best practices, and can be considered the state of the practice that could be followed for areas not fully addressed'' in the existing accessibility standards.[22]

In the absence of the proposed guidelines, the regulatory assessment assumes that state and local transportation departments will use the revised accessibility standards in the Department of Justice regulations implementing Title II of the Americans with Disabilities Act (hereinafter referred to as ''DOJ 2010 Standards'') to the extent feasible when designing, constructing, or altering pedestrian facilities in the public right-of-way, consistent with the guidance issued by the Federal Highway Administration, as well as other applicable standards and industry practices.[23] An analysis of the proposed guidelines compared to the DOJ 2010 Standards, other applicable standards, and industry practices is included in the appendix to the regulatory assessment. The analysis consists of three tables.

Table 1. Proposed Guidelines Contain Same Requirements as in DOJ 2010 Standards

Table 1 analyzes requirements in the proposed guidelines that are the same as requirements in the DOJ 2010 Standards.[24] The requirements in the proposed guidelines in Table 1 will have no impacts on state and local transportation departments compared to the requirements in the DOJ 2010 Standards because the requirements are the same.

Table 2. Proposed Guidelines Adapt Requirements in DOJ 2010 Standards

Table 2 analyzes requirements in the proposed guidelines that adapt requirements in the DOJ 2010 Standards to allow for conditions and constraints in the public right-of-way.[25] The requirements in the proposed guidelines in Table 2 do not establish greater requirements for accessibility in the public right-of-way than the requirements in the DOJ 2010 Standards and industry practices. Some of the requirements in the proposed guidelines in Table 2 establish lesser requirements for accessibility in the public right-of-way than the requirements in the DOJ 2010 Standards. For example, where the pedestrian access route in a sidewalk is contained within the street or highway

[19] Links to the design manuals and standard drawings maintained by state transportation departments are available on the Federal Highway Administration Web site at: *http://www.fhwa.dot.gov/programadmin/statemanuals.cfm* and *http://www.fhwa.dot.gov/programadmin/statestandards.cfm.*

[20] The AASHTO ''Policy on Geometric Design of Highways and Streets'' and ''Guide for the Planning, Design, and Operation of Pedestrian Facilities'' incorporate accessibility in the design of sidewalks, including minimum clear width, passing spaces, grade, cross slope, protruding objects, and surface treatments; curb ramps, including detectable warning surfaces; pedestrian overpasses and underpasses; and transit stops and transit shelters.

[21] See Federal Highway Administration, Office of Program Administration, ''Pedestrians and Accessible Design'' at: *http://www.fhwa.dot.gov/programadmin/pedestrians.cfm.* When the guidance was issued, the applicable accessibility standards in the Department of Justice regulations implementing Title II of the Americans with Disabilities Act and the Department of Transportation regulations implementing Section 504 adopted the 1991 ADAAG and permitted the Uniform Federal Accessibility Standards to be used.

[22] See Federal Highway Administration, ''Public Rights-of-Way Access Advisory'' (January 23, 2006) at: *http://www.fhwa.dot.gov/environment/bikeped/prwaa.htm.*

[23] See footnote 5 regarding the DOJ 2010 standards and effective dates.

[24] The requirements analyzed in Table 1 include: Drinking fountains, public toilet facilities, tables, counters, passenger loading zones, ramps, stairways, handrails, doors, doorways, gates, operable parts, clear spaces, knee and toe clearance, and reach ranges.

[25] The requirements analyzed in Table 2 include: Sidewalks and other pedestrian circulation paths, pedestrian street crossings, pedestrian overpasses and underpasses, pedestrian at-grade rail crossings, curb ramps and blended transitions, protruding objects, transit stops and transit shelters used by buses and light rail vehicles, on-street parking, and escalators. The requirements for transit stops and transit shelters used by buses and light vehicles are compared to the accessibility standards in the Department of Transportation regulations implementing the public transportation parts of Title II of the Americans with Disabilities Act.

right-of-way, the grade of the pedestrian access route is permitted to equal the general grade established for the adjacent street or highway to allow for typical roadway geometry instead of the running slope requirements for accessible routes on sites. The requirements in the proposed guidelines in Table 2 will have no impacts on state and local transportation departments compared to the requirements in the DOJ 2010 Standards and industry practices, except for the 2 percent maximum cross slope requirement for pedestrian access routes contained within pedestrian street crossings with stop or yield control where vehicles slow or stop before proceeding through the intersection (see R204.3 and R302.6). This requirement will have more than minimal impacts on the design and construction of new tabled intersections in hilly urban areas that contain pedestrian street crossings with stop or yield control. The impacts are analyzed in the regulatory assessment and discussed below under Cross Slope (R302.6) in the Section-by-Section Analysis.

Table 3. Proposed Guidelines Contain Requirements Not in DOJ 2010 Standards

Table 3 analyzes requirements in the proposed guidelines for which there are no corresponding requirements in the DOJ 2010 Standards.[26] The requirements in the proposed guidelines in Table 3 are compared to other applicable accessibility standards and the 2009 edition of Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD). Where the requirements in the proposed guidelines in Table 3 are the same as the requirements in other applicable accessibility standards or the MUTCD, the requirements will have no impacts on state and local transportation departments. Where a requirement in the proposed guidelines in Table 3 differs from a corresponding requirement in other applicable accessibility standards or there is no corresponding requirement in other applicable accessibility standards, the analysis used the following factors to identify whether the requirement will have more than minimal impacts on state and local transportation departments:

- Whether the requirement can be easily incorporated into the design of the element or facility?
- Whether the requirement adds features to the element or facility?
- Whether the requirement reduces space needed for other purposes?
- What are the additional costs due to the requirement compared to the total design and construction costs for the element or facility?

A requirement that can be easily incorporated into the design of an element or facility, and does not add features to the element or facility or reduce space needed for other purposes will have minimal impacts on state and local transportation departments. A requirement that cannot be easily incorporated into the design of an element or facility, adds features to the element or facility, or reduces space needed for other purposes and that results in additional costs compared to the total design and construction costs of the element or facility which are not negligible (*i.e.,* are worth considering) will have more than minimal impacts on state and local transportation departments.

The analysis identified three requirements in the proposed guidelines in Table 3 that will have more than minimal impacts on state and local transportation departments:

- Detectable warning surfaces on curb ramps and blended transitions at pedestrian street crossings (see R208.1 and R305);
- Accessible pedestrian signals and pedestrian pushbuttons (see R209); and
- Pedestrian activated signals at roundabout intersections with multi-lane pedestrian street crossings (see R206 and R306.3.2).

The impacts of these requirements are analyzed in the regulatory assessment and are discussed below under the relevant requirements in the Section-by-Section Analysis.

Question 1. Comments are requested on whether other requirements in the proposed guidelines will have more than minimal impacts on state and local transportation departments, in addition to the requirements identified in Tables 2 and 3. Comments should:

- Identify the requirement by section number or other information that identifies the specific requirement;
- Explain why the requirement will have more than minimal impacts using the factors described above or other appropriate factors; and
- Provide estimates of the additional costs due to the requirement compared to the total design and construction costs for the element or facility.

Question 2. Comments are requested on whether the requirements in the proposed guidelines have any unintended positive or negative consequences.

Question 3. Comments are requested on alternative regulatory approaches for achieving the objectives of the Americans with Disabilities Act, Section 504, and Architectural Barriers Act to eliminate the discriminatory effects of architectural, transportation, and communication barriers in the design and construction of pedestrian facilities in the public right-of-way.

Section-by-Section Analysis

The proposed guidelines consist of four chapters. Chapter R1 addresses the application and administration of the proposed guidelines. Chapter R2 contains scoping requirements. Chapter R3 contains technical requirements. Chapter R4 contains supplementary technical requirements, which are the same as in the 2004 ADA and ABA Accessibility Guidelines with a few exceptions. The sections in each chapter are discussed below. Sections marked as ''advisory'' contain advisory information related to the preceding section. Advisory sections do not establish mandatory requirements. Some advisory sections reference related mandatory requirements to alert readers about those requirements.

The Access Board is committed to writing guidelines that are clear, concise, and easy to understand so that persons who use the guidelines know what is required. If any of the proposed guidelines are ambiguous or not clear, point out the problematic language in your comments so it can be improved in the final guidelines.

Chapter R1: Application and Administration

R101 Purpose

The proposed guidelines contain scoping and technical requirements to ensure that facilities for pedestrian circulation and use located in the public right-of-way are readily accessible to and usable by pedestrians with disabilities. When the guidelines are adopted, with or without additions and modifications, as accessibility standards in regulations issued by other federal agencies implementing Title II of the Americans with Disabilities Act, Section 504, and the Architectural Barriers Act, compliance with the accessibility standards is mandatory.

The proposed guidelines do not address existing facilities unless they

[26] The requirements analyzed in Table 3 include: Alternate pedestrian access routes, pedestrian signal phase timing, accessible pedestrian signals and pedestrian pushbuttons, pedestrian street crossings at roundabouts, detectable warning surfaces on curb ramps and blended transitions at pedestrian street crossings, detectable warning surfaces on pedestrian at-grade rail crossings not located within a street or highway, pedestrian signs, and benches.

are included within the scope of an alteration to an existing facility undertaken at the discretion of a covered entity. The Department of Justice regulations implementing Title II of the Americans with Disabilities Act contain requirements for state and local governments regarding program accessibility and existing facilities. See 28 CFR 35.150. The Department of Transportation regulations implementing Section 504 also contain requirements for recipients of federal financial assistance from the Department regarding compliance planning. See 49 CFR 27.11(c). As discussed above under the Major Issues, transportation officials who commented on the 2002 draft guidelines expressed concern about existing facilities that are not altered. When the Department of Justice and Department of Transportation conduct rulemaking to include accessibility standards for pedestrian facilities in the public right-of-way in regulations implementing Title II of the Americans with Disabilities Act and Section 504, they will address the application of the accessibility standards to existing facilities that are not altered. Comments concerning existing facilities that are not altered should be directed to the Department of Justice and Department of Transportation when they conduct rulemaking to include accessibility standards for pedestrian facilities in the public right-of-way in regulations implementing Title II of the Americans with Disabilities Act and Section 504.

R102 Equivalent Facilitation

The use of alternative designs, products, or technologies that result in substantially equivalent or greater accessibility and usability than the proposed guidelines is permitted.

R103 Conventions

Conventional industry tolerances apply where dimensions are not stated as a range. Where the required number of accessible facilities or elements is based on ratios or percentages and remainders or fractions result, the next greater whole number is required. Where the required size or dimension of a facility or element is based on ratios or percentages, rounding down for values less than one half is permitted. Measurements are stated in metric and U.S. customary units, and each system of measurement is to be used independently of the other.

R104 Referenced Standards

The proposed guidelines incorporate by reference certain standards in the 2009 edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD). The referenced MUTCD standards are discussed below under the relevant requirements regarding the provision of alternate pedestrian access routes when a pedestrian circulation path is temporarily closed, the provision of accessible pedestrian signals and pedestrian pushbuttons, and pedestrian signal phase timing. The MUTCD is available on the Federal Highway Administration Web site at: *http://mutcd.fhwa.dot.gov.*

R105 Definitions

The proposed guidelines incorporate the MUTCD definitions for the following terms: Highway, intersection, island, median, pedestrian, roundabout, sidewalk, splitter island, and street. The proposed guidelines define the following terms: Accessible, alteration, blended transition, cross slope, curb line, curb ramp, element, facility, grade break, operable part, pedestrian access route, pedestrian circulation path, public right-of-way, qualified historic facility, running slope, and vertical surface discontinuities. These definitions are discussed in the sections where the terms are used. Collegiate dictionaries are used to determine the meaning of terms that are not defined in the proposed guidelines, referenced MUTCD standards, or regulations issued by federal agencies that adopt the proposed guidelines as accessibility standards. Singular and plural words, terms, and phrases are used interchangeably.

Chapter R2: Scoping Requirements

Scoping requirements specify what pedestrian facilities must comply with the proposed guidelines. Some of the scoping requirements are triggered where certain pedestrian facilities are provided such as pedestrian signals (see R209), street furniture (see R212), transit stops and transit shelters (see R213), on-street parking (see R214), and passenger loading zones (see R215). The scoping requirements reference the technical requirements that each pedestrian facility must comply with in order to be considered accessible. The technical requirements are discussed in Chapters R3 and R4.

R201 Application

The proposed guidelines apply to newly constructed facilities, altered portions of existing facilities, and elements added to existing facilities for pedestrian circulation and use located in the public right-of-way. The proposed guidelines apply to both permanent and temporary facilities in the public right-of-way. An advisory section provides examples of temporary facilities in the public right-of-way that are covered by the scoping requirements (*e.g.,* temporary pedestrian circulation routes around work zones and portable public toilets).

Buildings and structures in the public right-of-way that are not covered by the proposed guidelines must comply with the applicable requirements in the 2004 ADA and ABA Accessibility Guidelines. An advisory section provides examples of buildings and structures in the public right-of-way that are not covered by the proposed guidelines and must comply with the applicable requirements in the 2004 ADA and ABA Accessibility Guidelines (*e.g.,* towers and temporary performance stages and reviewing stands).

R202 Alterations and Elements Added to Existing Facilities

The proposed guidelines apply to alterations and elements added to existing facilities. Alterations are changes to an existing facility that affect or could affect pedestrian access, circulation, or use (see R105.5). Alterations include, but are not limited to, resurfacing, rehabilitation, reconstruction, historic restoration, or changes or rearrangement of structural parts or elements of a facility. The Department of Justice and Department of Transportation may provide guidance on the meaning of the word ''resurfacing'' when they conduct rulemaking to include accessibility standards for pedestrian facilities in the public right-of-way in regulations implementing Title II of the Americans with Disabilities Act and Section 504. Comments requesting guidance on the meaning of the term ''resurfacing'' should be directed to the Department of Justice and Department of Transportation when they conduct rulemaking to include accessibility standards for pedestrian facilities in the public right-of-way in regulations implementing Title II of the Americans with Disabilities Act and Section 504.

Where elements are altered or added to existing facilities but the pedestrian circulation path to the altered or added elements is not altered, the pedestrian circulation path is not required to comply with the proposed requirements for pedestrian access routes. For example, if a new bench is installed on an existing sidewalk that has a cross slope exceeding 2 percent, the sidewalk is not required to be altered to reduce the cross slope because the bench is installed on the sidewalk. Advisory information recommends that, where possible, added elements should be

located on an existing pedestrian access route. This provision is based on similar provisions in the 2004 ADA and ABA Accessibility Guidelines which do not require the circulation path to altered elements or spaces to comply with the requirements for accessible routes where the circulation path to the altered elements or spaces is not altered (see 202.3, Exception 1; and F202.3, Exception 1).

Where existing physical constraints make it impractical for altered elements, spaces, or facilities to fully comply with new construction requirements, compliance is required to the extent practicable within the scope of the project. Existing physical constraints include, but are not limited to, underlying terrain, right-of-way availability, underground structures, adjacent developed facilities, drainage, or the presence of a notable natural or historic feature.

The 2004 ADA and ABA Accessibility Guidelines (see 202.4 and F202.4) and the Department of Justice regulations implementing Title II of the Americans with Disabilities Act (see 28 CFR 35.151(b)) include an additional requirement for facilities on sites whereby an alteration that affects or could affect the usability of or access to an area containing a ''primary function'' must be made so as to ensure that, to the maximum extent feasible, the ''path of travel'' to the altered area is accessible, unless the additional cost and scope of the alterations to provide an accessible ''path of travel'' are disproportionate to the cost of the alteration to the ''primary function'' area. The Department of Justice regulations define the terms ''primary function'' and ''path of travel''. See 28 CFR 35.151(b)(4)(i) and (ii). According to the Department of Justice regulations, a ''primary function'' is a major activity for which the facility is intended. ''Primary function'' areas include the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, and corridors are not ''primary function'' areas. Restrooms are not ''primary function'' areas unless the provision of restrooms is a primary purpose of the area (*e.g.,* restrooms in highway rest stops). Alterations to windows, hardware, controls, electrical outlets, and signage are not alterations that affect the usability of or access to a ''primary function'' area. The Department of Justice regulations further state that a ''path of travel'' includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility. An accessible ''path of travel'' may consist of walks and sidewalks; curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements; and also includes the restrooms, telephones, and drinking fountains serving the altered area.

The Department of Justice regulations deem the additional cost of alterations to provide an accessible ''path of travel'' to the altered area disproportionate when it exceeds 20 percent of the cost of the alteration to the ''primary function'' area. See 28 CFR 35.151(b)(4)(iii). When the additional cost of alterations to provide an accessible ''path of travel'' to the altered area is disproportionate, the Department of Justice regulations require the ''path of travel'' to be made accessible to the extent that it can be made accessible without incurring disproportionate costs (*i.e.,* an amount equal to 20 percent of the cost of the alteration to the ''primary function'' area must be expended to provide an accessible ''path of travel'' to the altered area). See 28 CFR 35.151(b)(4)(iv). A similar requirement is not included in the proposed guidelines because of the uncertainty how the terms ''primary function'' and ''path of travel'' as defined in the Department of Justice regulations for facilities on sites would apply to pedestrian facilities in the public right-of-way. Revising the definitions of ''primary function'' and ''path of travel'' to apply to pedestrian facilities in the public right-of-way will not necessarily result in additional accessibility. For example, if an area that contains a ''primary function'' is defined to include sidewalks, an accessible ''path of travel'' would be required to the altered sidewalks, which in effect would require the cost and scope of planned sidewalk alteration projects to be increased by 20 percent. Sidewalk alteration projects can be planned to take into account the additional 20 percent scope and cost of work. For example, if a 5 block sidewalk alteration project would be planned in the absence of a requirement for an accessible ''path of travel'' to the altered sidewalks, imposing a requirement for an accessible ''path of travel'' to the altered sidewalks could result in a 4 block sidewalk alteration project being planned and the additional 20 percent scope and cost of work would result in a 5 block sidewalk alteration project.

Transitional segments of pedestrian access routes must connect to unaltered segments of existing pedestrian circulation paths and comply with the technical requirements for pedestrian access routes to the extent practicable. Alterations must not decrease or have the effect of decreasing the accessibility of a facility or an accessible connection to an adjacent building or site below the requirements for new construction in effect at the time of the alteration.

Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with a requirement would threaten or destroy historically significant features of a qualified historic facility, compliance is required to the extent that it does not threaten or destroy historically significant features of the facility. A qualified historic facility is a facility that is listed in or is eligible for listing in the National Register of Historic Places, or is designated as historic under state or local law (see R105.5)

R203 Machinery Spaces

Vaults, tunnels, and other spaces used by service personnel only are not required to comply with the proposed guidelines.

R204 Pedestrian Access Routes

A pedestrian access route is a continuous and unobstructed path of travel provided for pedestrians with disabilities within or coinciding with a pedestrian circulation path in the public right-of-way (see R105.5). Pedestrian access routes in the public right-of-way ensure that the transportation network used by pedestrians is accessible to pedestrians with disabilities. Pedestrian access routes in the public right-of-way are analogous to accessible routes on sites in that they connect to accessible elements, spaces, and facilities in the public right-of-way, including accessible pedestrian signals and pedestrian pushbuttons, accessible street furniture, accessible transit stops and transit shelters, accessible on-street parking spaces and parking meters and parking pay stations serving those parking spaces, and accessible passenger loading zones. Pedestrian access routes in the public right-of-way also connect to accessible routes at

building and facility site arrival points.[27]

Pedestrian access routes must be provided within:

- Sidewalks and other pedestrian circulation paths located in the public right-of-way;
- Pedestrian street crossings and at-grade rail crossings, including medians and pedestrian refuge islands; and
- Overpasses, underpasses, bridges, and similar structures that contain pedestrian circulation paths.

Where an overpass, underpass, bridge, or similar structure is designed for pedestrian use only and the approach slope to the structure exceeds 5 percent, a ramp, elevator, limited use/limited application elevator, or platform lift must be provided. Elevators and platform lifts must be unlocked during the operating hours of the facility served.

An advisory section notes that the Federal Highway Administration has issued guidance on the obligations of state and local governments to keep pedestrian access routes open and usable throughout the year, including snow and debris removal.

R205 Alternate Pedestrian Access Routes

Alternate pedestrian access routes must be provided when a pedestrian circulation path is temporarily closed by construction, alterations, maintenance operations, or other conditions. The alternate pedestrian access route must comply with the referenced MUTCD standards. The MUTCD standards require alternate pedestrian routes to be accessible and detectable, including warning pedestrians who are blind or have low vision about sidewalk closures. Proximity-actuated audible signs are a preferred means to warn pedestrians who are blind or have low vision about sidewalk closures.

R206 Pedestrian Street Crossings

Pedestrian street crossings must comply with technical requirements in Chapter R3 that reference MUTCD standards for pedestrian signal phase timing. The technical requirements in Chapter R3 also include requirements for roundabouts and multi-lane channelized turn lanes.

R207 Curb Ramps and Blended Transitions

Curb ramps, blended transitions, or a combination of curb ramps and blended transitions must connect the pedestrian access routes at each pedestrian street crossing. Curb ramps and blended transitions must be wholly contained within the pedestrian street crossings served. Typically, two curb ramps must be provided at each street corner. In alterations where existing physical constraints prevent two curb ramps from being installed at a street corner, a single diagonal curb ramp is permitted at the corner.

R208 Detectable Warning Surfaces

Detectable warning surfaces consist of small truncated domes built in or applied to a walking surface that are detectable underfoot. On pedestrian access routes, detectable warning surfaces indicate the boundary between a pedestrian route and a vehicular route where there is a flush rather than a curbed connection for pedestrians who are blind or have low vision. Detectable warning surfaces are not intended to provide wayfinding for pedestrians who are blind or have low vision. An advisory section provides information on streetscape designs that can make wayfinding easier. Detectable warning surfaces must be provided at the following locations on pedestrian access routes and at transit stops:

- Curb ramps and blended transitions at pedestrian street crossings;
- Pedestrian refuge islands;
- Pedestrian at-grade rail crossings not located within a street or highway;
- Boarding platforms at transit stops for buses and rail vehicles where the edges of the boarding platform are not protected by screens or guards; and
- Boarding and alighting areas at sidewalk or street level transit stops for rail vehicles where the side of the boarding and alighting areas facing the rail vehicles is not protected by screens or guards.

Detectable warning surfaces are not required at pedestrian refuge islands that are cut-through at street level and are less than 1.8 meters (6 feet) in length in the direction of pedestrian travel because detectable warning surfaces must extend 610 millimeters (2 feet) minimum on each side of the island and be separated by a 610 millimeters (2 feet) minimum length of island without detectable warning surfaces (see R305.1.4 and R305.2.4). Installing detectable warning surfaces at cut-through pedestrian islands that are less than 1.8 meters (6 feet) in length would compromise the effectiveness of detectable warning surfaces. An advisory section recommends that where a cut-through pedestrian island is less than 1.8 meters (6 feet) in length and the pedestrian street crossing is signalized, the signal should be timed for a complete crossing of the street.

Comments From Individuals Who Are Blind or Have Low Vision

The National Federation of the Blind was a member of the advisory committee that recommended the proposed guidelines, but filed a minority report recommending detectable warning surfaces should be required only on curb ramps with slopes of 6.6 percent or less, and at medians and pedestrian refuge islands. Comments on the 2002 draft guidelines from individuals who identified themselves as blind or having low vision supported requiring detectable warning surfaces on all curb ramps by a margin of 2:1.

Detectable Warning Surfaces on Curb Ramps

When the Access Board issued the 1991 ADAAG, the guidelines contained a requirement for detectable warning surfaces on curb ramps. The requirement was temporarily suspended between 1994 and 2001 pending additional research and review of issues relating to requirement. The Access Board deferred addressing detectable warning surfaces on curb ramps in the 2004 ADA and ABA Accessibility Guidelines pending completion of the guidelines for pedestrian facilities in the public right-of-way. As a result of these actions, there are different requirements for detectable warning surfaces on curb ramps in the accessibility standards included the regulations issued by the Department of Justice implementing Title II of the Americans with Disabilities Act and by the Department of Transportation implementing Section 504.

When the Department of Justice initially issued regulations in 1991 implementing Title II of the Americans with Disabilities Act, the regulations required state and local governments to use accessibility standards (hereinafter referred to as the ''DOJ 1991 Standards'') that included the 1991 ADAAG which contained a requirement for detectable warning surfaces on curb ramps, or the Uniform Federal Accessibility Standards (UFAS) which did not contain a requirement for detectable warning surfaces on curb ramps.[28] When the Department of Justice adopted the DOJ 2010 Standards, those standards included the 2004 ADA and ABA Accessibility Guidelines which do not

[27] The ADA and ABA Accessibility Guidelines require accessible routes on sites to connect to site arrival points, including public streets and sidewalks (see 206.2.1 and F206.2.1).

[28] UFAS was issued in 1984 by the General Services Administration and other federal agencies responsible for issuing accessibility standards for facilities covered by the Architectural Barriers Act. See 49 FR 31528 (August 7, 1984).

contain a requirement for detectable warning surfaces on curb ramps.

The Department of Transportation regulations implementing Section 504 require state and local governments that receive federal financial assistance directly or indirectly from the Department to use accessibility standards that include the 2004 ADA and ABA Accessibility Guidelines, as modified by the Department, or UFAS. See 49 CFR 27.3(b). The Department of Transportation modified the 2004 ADA and ABA Accessibility Guidelines by retaining certain requirements from the 1991 ADAAG, including the requirement for detectable warning surfaces on curb ramps. See 406.8 in Appendix A to 49 CFR part 37.

State and local transportation departments will be affected differently by the requirement in the proposed guidelines for detectable warning surfaces on curb ramps depending on the accessibility standards that they use for curb ramps in the public right-of-way. The Access Board reviewed the standard drawings for the design of curb ramps on state transportation department Web sites and found that the transportation departments in all 50 states and the District of Columbia specify detectable warning surfaces on curb ramps in the standard drawings.[29] Most local transportation departments use standard drawings for the design of curb ramps that are consistent with the standard drawings maintained by their state transportation departments. These state and local transportation departments use either the DOJ 1991 Standards, which include the 1991 ADAAG requirement for detectable warning surfaces on curb ramps, or the Department of Transportation accessibility standards, which include the 2004 ADA and ABA Accessibility Guidelines as modified by the Department to include the requirement from the 1991 ADAAG for detectable warning surfaces on curb ramps.[30]

Governmental Units Affected

State and local transportation departments are divided into four groups for the purpose of evaluating the impacts of the requirement in the proposed guidelines for detectable warning surfaces on curb ramps:

- Group 1 consists of state and local transportation departments that use UFAS for curb ramps as currently permitted by the Department of Justice and Department of Transportation regulations implementing Title II of the Americans with Disabilities Act and Section 504. UFAS did not contain a requirement for detectable warning surfaces on curb ramps. The Access Board is not aware of any state or local transportation departments that use UFAS. The Department of Justice regulations do not permit the use of UFAS on or after March 15, 2012. See 28 CFR 35.151(c)(3). Thus, Group 1 will cease to exist as of March 15, 2012, and any state and local transportation departments currently in Group 1 will fall into one of the other groups.

Question 4. The Access Board seeks information on whether any state and local transportation departments currently use UFAS for curb ramps in the public right-of-way.

- Group 2 consists of state and local transportation departments that receive federal financial assistance directly or indirectly from the Department of Transportation. State and local transportation departments in Group 2 are required to comply with the accessibility standards in the Department of Justice regulations implementing Title II of the Americans with Disabilities Act and the Department of Transportation regulations implementing Section 504. Where the requirements in the accessibility standards in the Department of Justice and Department of Transportation regulations differ, the more stringent requirement must be used. Excluding any state and local transportation departments in Group 1, state and local transportation departments in Group 2 must comply with the requirement for detectable warning surfaces on curb ramps in the Department of Transportation regulations because it is the more stringent requirement. All state transportation departments and most local transportation departments are in Group 2 and specify detectable warning surfaces on curb ramps in their standard drawings. The requirement in the proposed guidelines for detectable warning surfaces on curb ramps will not have any impacts on state and local transportation departments in Group 2.
- Group 3 consists of local transportation departments that do not receive federal financial assistance directly or indirectly from the Department of Transportation. Local transportation departments in Group 3 are required to comply only with the accessibility standards in the Department of Justice regulations implementing Title II of the Americans with Disabilities Act. Excluding any local transportation departments in Group 1, local transportation departments in Group 3:
  - Used the DOJ 1991 Standards, which include the 1991 ADAAG and contain a requirement for detectable warning surfaces on curb ramps, before September 15, 2010. See 28 CFR 35.151(c)(1).
  - Are permitted to use the DOJ 1991 Standards, which include the 1991 ADAAG and contain a requirement for detectable warning surfaces on curb ramps, or the DOJ 2010 Standards, which include the 2004 ADA and ABA Accessibility Guidelines and do not contain a requirement for detectable warnings on curb ramps, between September 15, 2010 and March 14, 2012. See 28 CFR 35.151(c)(2).
  - Must use the DOJ 2010 Standards, which include the 2004 ADA and ABA Accessibility Guidelines and do not contain a requirement for detectable warnings on curb ramps, on or after March 15, 2012. See 28 CFR 35.151(c)(3).

Thus, local transportation departments in Group 3 were required to provide detectable warning surfaces on curb ramps before September 15, 2010; may or may not be required to provide detectable warning surfaces on curb ramps between September 15, 2010 and March 14, 2012 depending on the accessibility standard they use (DOJ 1991 Standards or DOJ 2010 Standards); and are not required to provide detectable warning surfaces on curb ramps on or after March 15, 2012 pending the future adoption of accessibility standards for pedestrian facilities in the public right-of-way by the Department of Justice.

Question 5. The Access Board seeks information on whether local transportation departments in Group 3 will continue or discontinue providing detectable warning surfaces on curb ramps in the public right-of-way pending the future adoption of accessibility standards for pedestrian facilities in the public right-of-way by the Department of Justice.

- Group 4 consists of state and local transportation departments that do not

[29] Links to each state transportation department's standard drawings that specify detectable warning surfaces on curb ramps are available on the Access Board Web site at: *http://www.access-board.gov/prowac/index.htm.*

[30] The DOJ 1991 Standards require detectable warning surfaces to extend the full width and depth of the curb ramp (see 4.7.7, Appendix E to 28 CFR part 36). The Department of Transportation standards require detectable warning surfaces to extend the full width of the curb ramp (exclusive of flared sides) and either the full depth of the curb ramp or 24 inches deep minimum measured from the back of the curb on the ramp surface (see 406.8, Appendix A to 49 CFR part 37). Guidance issued by the Department of Justice permits the use of the Department of Transportation standards for detectable warning surfaces on curb ramps. See Department of Justice, ''ADA Best Practices Tool Kit for State and Local Governments, Curb Ramps and Pedestrian Crossings'' (May 7, 2006) at: *http://www.ada.gov/pcatoolkit/toolkitmain.htm.*

comply with accessibility standards for curb ramps in the public right-of-way. The Department of Justice and Federal Highway Administration have provided guidance on accessibility standards that apply to curb ramps in the public right-of-way, including the requirement for detectable warning surfaces.[31] Despite the guidance provided by the Department of Justice and the Federal Highway Administration on the accessibility standards that apply to curb ramps in the public right-of-way, there may be state and local transportation departments that do not comply with the standards.

Question 6. Comments are requested on whether the future adoption of accessibility standards for pedestrian facilities in the public right of way by the Department of Justice and Department of Transportation in regulations implementing Title II of the Americans with Disabilities Act and Section 504 will have a positive or negative effect, or no effect on the compliance rates of state and local transportation departments, particularly with respect to providing detectable warning surfaces on curb ramps.

Question 7. The Access Board seeks information on the number of curb ramps that are constructed or altered on an annual basis in the public right-of-way by state and local transportation departments.

Costs To Provide Detectable Warning Surfaces on Curb Ramps

Detectable warning surfaces are available in a variety of materials. The Volpe Center gathered data from local transportation departments and vendors on various detectable warning materials and estimated the costs of 8 square feet of the materials for a typical curb ramp as shown in the table below. The estimates do not include installation costs.

Detectable warning surfaces	Materials costs for typical curb ramp
Concrete pavers	$48 to 80
Brick pavers	$128
Polymer and composite materials.	$120 to 200
Stainless steel or cast iron products.	$240

Question 8. The Access Board seeks additional information on the costs for detectable warning materials (8 square feet) and installation of the materials on a typical curb ramp.

Detectable Warning Surfaces on Boarding Platforms Used by Buses and Rail Vehicles, and Boarding and Alighting Areas Used by Rail Vehicles

The 1991 ADAAG and 2004 ADA and ABA Accessibility Guidelines contain a requirement for detectable warning surfaces on rail platforms.[32] The proposed guidelines adapt this requirement to transit stops in the public right-of-way, and require detectable warning surfaces on boarding platforms at transit stops for buses and rail vehicles (*i.e.,* raised platforms used for level boarding by bus rapid transit systems and light rail systems) and at boarding and alighting areas at sidewalk or street level transit stops for rail vehicles. Detectable warning surfaces are not required where the edges of the boarding platform or the boarding and alighting areas facing the rail vehicles are protected by screens or guards.

Durability and Maintenance of Detectable Warning Surfaces

Transportation officials who commented on the 2002 draft guidelines expressed concern about the durability and maintenance of detectable warning surfaces. The National Cooperative Highway Research Program (NCHRP) has conducted two studies on the durability and maintenance of detectable warning surfaces. The first study was completed in 2005 and reviewed performance information submitted by state and local transportation departments.[33] The performance information was limited in terms of the products reviewed and time period of review (about 2 years). The study noted that there were new promising detectable warning products on the market, and recommended that test methods be developed for evaluating the long-term performance and durability of the products. The second study was completed in 2010 and recommended procedures for testing and evaluating detectable warning products.[34] The test methods can be used by state and local transportation departments to select detectable warning products that will provide long-term performance and durability under different environmental conditions. Many state and local transportation departments have evaluated and approved detectable warning products that are suited to their environments.

R209 Accessible Pedestrian Signals and Pedestrian Pushbuttons

An accessible pedestrian signal and pedestrian pushbutton is an integrated device that communicates information about the WALK and DON'T WALK intervals at signalized intersections in non-visual formats (*i.e.*, audible tones and vibrotactile surfaces) to pedestrians who are blind or have low vision. The pedestrian pushbutton has a locator tone for detecting the device and a tactile arrow to indicate which pedestrian street crossing is served by the device. The MUTCD contains standards for accessible pedestrian signals and pedestrian pushbuttons, but does not require that they be provided. The proposed guidelines require accessible pedestrian signals and pedestrian pushbuttons to be provided when new pedestrian signals are installed. For existing pedestrian signals, the proposed guidelines require accessible pedestrian signals and pedestrian pushbuttons to be provided when the signal controller and software are altered, or the signal head is replaced. Accessible pedestrian signals and pedestrian pushbuttons must comply with the referenced standards in the MUTCD and the technical requirements for operable parts in Chapter R4. Technical assistance and training on the installation of accessible pedestrian signals and pedestrian pushbuttons is available from the Access Board and transportation industry professional associations.[35]

Comments From Individuals Who Are Blind or Have Low Vision

The National Federation of the Blind was a member of the advisory committee that recommended the proposed guidelines, but filed a minority report recommending that state and local governments consult with the local blind community to determine whether to provide accessible

[31] See Department of Justice, ''ADA Best Practices Tool Kit for State and Local Governments, Curb Ramps and Pedestrian Crossings'' (May 7, 2006) at: *http://www.ada.gov/pcatoolkit/toolkitmain.htm;* and Federal Highway Administration, ''Information on Detectable Warnings'' (May 6, 2002) at: *http://www.fhwa.dot.gov/environment/bikeped/dwm.htm.*

[32] See 1991 ADAAG, 10.3.1(8); and 2004 ADA and ABA Accessibility Guidelines, 810.5.2.

[33] ''Synthesis of Maintenance and Durability Information for Detectable Warnings on Sidewalks'' March 2005 at: *http://maintenance.transportation.org/Documents/DetectableWarning20-7%28177%29.pdf.*

[34] ''Procedures for Testing and Evaluating Detectable Warning Systems'' March 2010 at: *http://onlinepubs. trb.org/onlinepubs/nchrp/nchrp_rpt_670.pdf.*

[35] Technical assistance and training on the installation of accessible pedestrian signals are available on the following Web sites: Access Board at: *http://www.access-board.gov/research/pedestrian-signals/bulletin.htm;* Accessible Design for the Blind: *http://www.accessforblind.org/aps_abt.html;* Institute of Transportation Engineers at: *http://www.ite.org/education/olg.asp;* National Highway Cooperative Research Program at: *http://www.apsguide.org/;* and Transportation Research Board at: *http://www.trb.org/Main/Public/Blurbs/159938.aspx.*

pedestrian signals and pushbuttons on an intersection-by-intersection basis. Comments on the 2002 draft guidelines from individuals who identified themselves as blind or having low vision supported providing accessible pedestrian signals and pushbuttons at each signalized intersection where pedestrian signals are newly installed or replaced by a margin of 2:1.

Governmental Units Affected

The Transportation Equity Act for the 21st Century (TEA–21) directed that audible traffic signals be included in transportation plans and projects where appropriate. See 23 U.S.C. 217(g). Some state and local transportation departments currently provide accessible pedestrian signals and pedestrian pushbuttons when pedestrian signals are newly installed or replaced at signalized intersections. The requirement in the proposed guidelines for accessible pedestrian signals and pedestrian pushbuttons will have impacts on state and local transportation departments that do not currently provide accessible pedestrian signals and pedestrian pushbuttons when pedestrian signals are newly installed or replaced at signalized intersections.

Question 9. The Access Board seeks information on how many state and local transportation departments currently provide accessible pedestrian signals and pedestrian pushbuttons when pedestrian signals are newly installed or replaced at signalized intersections.

Costs To Provide Accessible Pedestrian Signals and Pedestrian Pushbuttons

The Volpe Center estimated the additional cost for an accessible pedestrian pushbutton compared to conventional pushbutton is $350 per unit. For a typical intersection with four crosswalks, two accessible pedestrian pushbuttons would be required at each corner for a total of eight units per intersection and a total additional cost of $2,800 for the eight units. The cost of the units is expected to decrease as a result of the proposed guidelines due to greater standardization of customer requirements and increased orders. The total additional cost to provide accessible pedestrian signals and pedestrian pushbuttons, including labor and other equipment such as stub poles and conduit, will vary by location. The Volpe Center estimated that the total additional costs are $3,600 per intersection based on a published cost study and interviews with local transportation departments.

Question 10. The Access Board seeks information from state and local transportation departments that currently provide accessible pedestrian signals and pedestrian pushbuttons on the additional costs to provide the accessible pedestrian signals and pedestrian pushbuttons.

The Volpe Center estimated that pedestrian signals are newly installed or replaced at 13,095 signalized intersections on an annual basis based on the following assumptions:

- There are over 300,000 existing signalized intersections in the United States using a rule-of-thumb of one signalized intersection per 1,000 population.[36]
- There are 2,550 new signalized intersections in the United States each year based on the U.S. Census Bureau forecast of future population growth (0.85 percent).
- Ninety (90) percent of new and existing signalized intersections in the United States provide pedestrian signals.
- The life cycle or replacement rate for existing pedestrian signals is 25 years.

The Volpe Center estimated that the total annual costs are $47 million for requiring accessible pedestrian signals and pedestrian pushbuttons when pedestrian signals are newly installed or replaced at signalized intersections.

Question 11. Comments are requested on the assumptions used to estimate the total annual costs for requiring accessible pedestrian signals and pushbuttons when pedestrian signals are newly installed or replaced at signalized intersections.

R210 Protruding Objects

Objects that protrude into pedestrian circulation paths can be hazardous for pedestrians, especially pedestrians who are blind or have low vision. Objects along or overhanging any portion of a pedestrian circulation path must comply with the technical requirements for protruding objects in Chapter R4. Objects also must not reduce the clear width required for pedestrian access routes. An advisory section provides examples of street furniture and other objects that must comply with these requirements, and notes that the AASHTO ''Guide for the Planning, Design, and Operation of Pedestrian Facilities'' recommends that local governments regulate the use of sidewalks by private entities for activities such as outdoor dining, vending carts and stands, and street fairs under an encroachment permit process that addresses accessibility, including protruding objects and maintaining the clear width of pedestrian access routes.

R211 Signs

Signs that provide directions, warnings, or other information for pedestrians only and signs that identify routes served by transit stops must comply with the technical requirements for visual characters in Chapter R4. An advisory section provides examples of signs that are required and are not required to comply with the technical requirements for visual characters in Chapter R4. Signs displaying the International Symbol of Accessibility must be provided at accessible parking spaces and accessible passenger loading zones.

The 2004 ADA and ABA Accessibility Guidelines contain similar requirements for transit signs (see 810.4 and 810.6). In the 2004 ADA and ABA Accessibility Guidelines, characters on bus route signs must comply with the technical requirements for character height ''to the maximum extent practicable.''[37] The phrase ''to the maximum extent practicable'' was intended to provide flexibility where there are restrictions on the size of signs. A similar provision is not included in the proposed guidelines because it is almost always practicable to comply with the technical requirements for character height.

Audible sign systems and other technologies are widely used today to transmit information and are more usable by pedestrians who are blind or have low vision.[38] Where audible sign systems and other technologies are used to transmit information equivalent to the information contained on signs, the signs are not required to comply with the technical requirements for visual characters in Chapter R4.

Question 12. The Access Board seeks information on technologies that are currently used or are under development to transmit information that is equivalent to the information contained on pedestrian signs and transit signs provided in the public right-of-way.

[36] See MUTCD ''Frequently Asked Questions—Part 4—Highway Traffic Signals'' at: *http://mutcd.fhwa.dot.gov/knowledge/faqs/faq_part4.htm.*

[37] The 2004 ADA and ABA Accessibility Guidelines also do not require bus route signs to comply with the technical requirements for minimum height above the ground and line spacing (see 703.5.6, 703.5.9, and 810.4).

[38] The ANSI approved standard ''ICC A117.1–2009: Accessible and Usable Buildings and Facilities'' includes technical requirements for remote infrared audible sign systems (see 703.8).

R212 Street Furniture

Drinking fountains, public toilet facilities, tables, and counters must comply with applicable requirements in the 2004 ADA and ABA Accessibility Guidelines. Where multiple single-user public toilet facilities are clustered at a single location, at least 5 percent, but no less than one, of the toilet facilities in each cluster must be accessible and identified by the International Symbol of Accessibility. At least 50 percent, but no less than one, of benches at each location must provide a clear space for a wheelchair adjacent to the bench. Benches at tables are not required to comply.

R213 Transit Stops and Transit Shelters

Transit stops and transit shelters must comply with the technical requirements for transit stops and transit shelters in Chapter R3. Transit stops in the public right-of-way typically serve fixed route bus systems, including bus rapid transit systems, and light rail transit systems. An advisory section notes that the Federal Highway Administration has issued guidance on the obligation of state and local transportation departments, metropolitan planning organizations, and transit agencies to coordinate the planning and funding of accessibility improvements to transit systems and facilities.

R214 On-Street Parking Spaces

Where on-street parking is provided on the block perimeter and the parking is marked or metered, a minimum number of parking spaces must be accessible and comply with the technical requirements for parking spaces in Chapter R3. For every 25 parking spaces on the block perimeter up to 100 spaces, one parking space must be accessible. For every additional 50 parking spaces on the block perimeter between 101 and 200 spaces, an additional parking space must be accessible. Where more than 200 parking spaces are provided on the block perimeter, 4 percent of the parking spaces must be accessible. Metered parking includes parking metered by parking pay stations. Where parking is metered by parking pay stations and the parking is not marked, each 6.1 meters (20 feet) of the block perimeter where parking is permitted is counted as one parking space for determining the minimum number of accessible parking spaces.

R215 Passenger Loading Zones

Where passenger loading zones are provided, at least one passenger loading zone for each 30 meters (100 feet) of continuous loading zone space or fraction thereof must be accessible and comply with the technical requirements for passenger loading zones in Chapter R3.

R216 Stairways and Escalators

Stairways on pedestrian circulation paths must comply with technical requirements for stairways in Chapter R4. Escalators on pedestrian circulation paths must comply with the applicable technical requirements in the 2004 ADA and ABA Accessibility Guidelines. Stairways and escalators cannot be part of a pedestrian access route.

R217 Handrails

Handrails are not required on pedestrian circulation paths. However, if handrails are provided on pedestrian circulation paths, the handrails must comply with the technical requirements for handrails in Chapter R4.

R218 Doors, Doorways, and Gates

Doors, doorways, and gates to pedestrian facilities such as transit shelters must comply with applicable technical requirements in the 2004 ADA and ABA Accessibility Guidelines.

Chapter R3: Technical Requirements

Technical requirements specify what design criteria elements, spaces, and facilities must comply with in order to be considered accessible.

R301 General

The technical requirements in Chapter R3 apply where required by the scoping requirements in Chapter R2, or where referenced by another technical requirement in Chapters R3 or R4.

R302 Pedestrian Access Routes

General (R302.1)

The technical requirements for pedestrian access routes are contained in R302, and adapt the technical requirements for accessible routes in the 2004 ADA and ABA Accessibility Guidelines to the public right-of-way. In alterations where existing physical constraints make it impractical to fully comply with the technical requirements, compliance is required to the extent practicable within the scope of the project (see R202.3.1).

Components (R302.2)

The components of pedestrian access routes and the technical requirements for each component are listed in R302.2. Sidewalks and other pedestrian circulation paths, pedestrian street crossings, and pedestrian overpasses and underpasses and similar structures must comply with all the technical requirements in R302.3 through R302.7. Curb ramps and blended transitions must comply with the technical requirements in R302.7 and R304. Ramps must comply with the technical requirements in R407. Elevators, limited use/limited application elevators, platform lifts, and doors, doorways, and gates must comply with applicable technical requirements in the 2004 ADA and ABA Accessibility Guidelines.

Continuous Width (R302.3)

The continuous clear width of pedestrian access routes (exclusive of the width of the curb) must be 1.2 meters (4 feet) minimum, except for medians and pedestrian refuge islands where the clear width must be 1.5 meters (5 feet) minimum in order to allow for passing space. The AASHTO ''Guide for the Planning, Design, and Operation of Pedestrian Facilities'' recommends that sidewalks be wider than 1.2 meters (4 feet), particularly in urban areas. Where sidewalks are wider than 1.2 meters (4 feet), only a portion of the sidewalk is required to comply with the technical requirements in R302.3 through R302.7.

The advisory committee recommended a minimum width of 1.5 meters (5 feet) for pedestrian access routes. The proposed guidelines specify a minimum width of 1.2 meters (4 feet) in order to allow for street furniture and other objects that may be located on sidewalks. R210 prohibits street furniture and other objects from reducing the clear width required for pedestrian access routes. A minimum width of 1.2 meters (4 feet) will accommodate turns at intersections and building entrances. Advisory information recommends additional maneuvering clearance at turns or changes in direction, recesses and alcoves, building entrances, and along curved or angled routes, particularly where the grade exceeds 5 percent.

Passing Spaces (R302.4)

Where the clear width of pedestrian access routes is less than 1.5 meters (5 feet), passing spaces must be provided at intervals of 61 meters (200 feet) maximum. Passing spaces must be 1.5 meters (5 feet) minimum by 1.5 meters (5 feet) minimum. Passing spaces are permitted to overlap pedestrian access routes.

Grade (R302.5)

Grade is the slope parallel to the direction of pedestrian travel. Grade is calculated by dividing the vertical change in elevation by the horizontal distance covered, and is expressed as a percent. Where pedestrian access routes

are contained within a street or highway right-of-way, the grade of the pedestrian access route is permitted to equal the general grade established for the adjacent street or highway, except that where pedestrian access routes are contained within pedestrian street crossings a maximum grade of 5 percent is required. This is consistent with the AASHTO ''Policy on Geometric Design of Highways and Streets'' which recommends that the sidewalk grade follow the grade of adjacent roadways, and also recommends maximum cross slopes for roadways. Where pedestrian access routes are not contained within a street or highway right-of-way, a maximum grade of 5 percent is required.

Cross Slope (R302.6)

Cross slope is the slope perpendicular to the direction of pedestrian travel (see R105.5). On a sidewalk, cross slope is measured perpendicular to the curb line or edge of the street or highway. Cross slope impedes travel by pedestrians who use wheeled mobility devices since energy must be expended to counteract the perpendicular force of the cross slope. Cross slope makes it more difficult for pedestrians who use wheelchairs to travel on uphill slopes and to maintain balance and control on downhill slopes. Cross slope also negatively affects pedestrians who use braces, lower limb prostheses, crutches, or walkers, as well as pedestrians who have gait, balance, or stamina impairments. The maximum cross slope permitted on accessible routes in the 2004 ADA and ABA Accessibility Guidelines is 2 percent. In exterior environments, a maximum cross slope of 2 percent is generally accepted as adequate to allow water to drain off paved walking surfaces.

A maximum cross slope of 2 percent is specified for pedestrian access routes, except for pedestrian access routes contained within certain pedestrian street crossings in order to allow for typical roadway geometry. A 5 percent maximum cross slope is specified for pedestrian access routes contained within pedestrian street crossings without yield or stop control to avoid any unintended negative impacts on the control and safety of vehicles, their occupants, and pedestrians in the vicinity of the intersection. Pedestrian street crossings without yield or stop control are crossings where there is no yield or stop sign, or where there is a traffic signal that is designed for the green phase. At pedestrian street crossings without yield or stop control vehicles can proceed through the intersection without slowing or stopping. The cross slope of pedestrian access routes contained within midblock pedestrian street crossings is permitted to equal the street or highway grade.

Question 13. Comments are requested on whether the description of pedestrian street crossings without yield or stop control is clear, or whether there is a better way to describe such crossings?

In new construction, where pedestrian access routes within sidewalks intersect at corners, the 2 percent maximum cross slope requirement will result in level corners (*i.e.,* the slope at the corners will not exceed 2 percent in each direction of pedestrian travel). The level corners will provide a platform for providing level spaces for curb ramps and blended transitions, pedestrian street crossings, and accessible pedestrian signals and pedestrian pushbuttons.

Newly Constructed Tabled Intersections That Contain Pedestrian Street Crossings With Yield or Stop Control

The 2 percent maximum cross slope requirement applies to pedestrian access routes within pedestrian street crossings with yield or stop control where vehicles slow or stop before proceeding through the intersection. The cross slope of the pedestrian access route within the pedestrian street crossing is the longitudinal grade of the street being crossed, and the 2 percent maximum cross slope requirement will impact the vertical alignment of streets in the vicinity of the intersection. In new construction, street intersections in hilly urban areas are typically cut-and filled to produce relative flat or tabled intersections. Where pedestrian street crossings with yield or stop control are provided at newly constructed tabled intersections, the tabling would be extended to the pedestrian street crossings to comply with the 2 percent maximum cross slope for pedestrian access routes within the pedestrian street crossings.

Question 14. The Access Board seeks information on the current design policies and practices of state and local transportation departments with respect to tabling newly constructed intersections in hilly urban areas, and particularly whether the tabling is extended to pedestrian street crossings with yield or stop control.

In new construction, extending the tabling of intersections to pedestrian street crossings with yield or stop control involves additional costs for site preparation, grading, and earthwork. The Volpe Center roughly estimated the additional costs to extend the tabling to pedestrian street crossings with yield or stop control to be $60,000 per intersection based on information provided by a transportation official to the Access Board. The costs will vary by site.

Question 15. The Access Board seeks information on the additional costs to extend the tabling of newly constructed intersections in hilly urban areas to pedestrian street crossings with yield or stop control.

Question 16. The Access Board seeks information on number of tabled intersections which contain pedestrian street crossings with yield or stop control that are newly constructed in hilly urban areas on an annual basis by state and local transportation departments.

Surfaces (R302.7)

The proposed technical requirements for surfaces apply to pedestrian access routes, including curb ramps and blended transitions, and accessible elements and spaces that connect to pedestrian access routes. An advisory section lists the accessible elements and spaces that connect to pedestrian access routes and are required to comply with the technical requirements for surfaces.

The surfaces of pedestrian access routes and the surfaces at accessible elements and spaces that connect to pedestrian access routes must be firm, stable, and slip resistant. Vertical alignment of surfaces within pedestrian access routes (including curb ramp runs, blended transitions, turning spaces, and gutter areas within pedestrian access routes) and within the surfaces at accessible elements and spaces that connect to pedestrian access routes must be generally planar. Grade breaks (*i.e.,* the line where two surface planes with different grades meet, see R105.5) must be flush. Where pedestrian access routes cross rails at grade, the pedestrian access route must be level and flush with the top of the rail at the outer edges of the rails, and the surfaces between the rails must be aligned with the top of the rail.

Vertical surface discontinuities (*i.e.,* vertical difference in level between two adjacent surfaces, see R105.5) must be 13 millimeters (0.5 inch) maximum. Vertical surface discontinuities between 6.4 millimeters (0.25 inch) and 13 millimeters (0.5 inch) must be beveled with a slope not steeper than 50 percent, and the bevel must be applied across the entire vertical surface discontinuity. Horizontal openings in gratings and joints must not permit the passage of a sphere more than 13 millimeters (0.5 inch) in diameter. Elongated openings in gratings must be placed so that the

long dimension is perpendicular to the dominant direction of travel.

Flangeway gaps at pedestrian at-grade rail crossings must be 64 millimeters (2.5 inches) maximum on non-freight rail track, and 75 millimeters (3 inches) maximum on freight rail track. These are the typical gaps required to allow passage of train wheel flanges. The flangeway gaps are wider than the maximum gap allowed for horizontal openings in other surfaces. These wider flangeway gaps pose a potential safety hazard to pedestrians who use wheelchairs because the gap can entrap the wheelchair casters.[39] The Federal Railroad Administration is sponsoring research to develop materials or devices that will fill the flangeway gap under light loads of a wheelchair but will compress or retract when a train wheel flange passes over it.[40] The materials or devices will be tested under heavy and light train loads for safety, effectiveness, durability, and cost.

Question 17. The Access Board seeks information on materials and devices that fill the flangeway gap, and any related research and sources of expertise.

R303 Alternate Pedestrian Access Routes (See R205)

In the 2005 draft of the proposed guidelines, the technical requirements for alternate pedestrian access routes were contained in Chapter R3. The proposed guidelines reference MUTCD standards for alternate pedestrian access routes in the scoping requirements at R205. This section heading is included in Chapter R3 of the proposed guidelines to notify readers who were familiar with the 2005 draft of the proposed guidelines where to find the requirements for alternate pedestrian access routes. This section heading will not be included in the final guidelines.

R304 Curb Ramps and Blended Transitions

General (R304.1)

Curb ramps are ramps that are cut through or built up to the curb (see R105.5). Curb ramps can be perpendicular or parallel, or a combination of parallel and perpendicular ramps. Blended transitions are raised pedestrian street crossings, depressed corners, or similar connections between the pedestrian access route at the level of the sidewalk and the level of the pedestrian street crossing that have a grade of 5 percent or less (see R105.5).

The technical requirements for curb ramps and blended transitions are contained in R304 and adapt the technical requirements for curb ramps in the 2004 ADA and ABA Accessibility Guidelines to the public right-of-way. In alterations where existing physical constraints make it impractical to fully comply with the technical requirements, compliance is required to the extent practicable within the scope of the project (see R202.3.1).

Perpendicular Curb Ramps (R304.2)

Perpendicular curb ramps have a running slope that cuts through or is built up to the curb at right angles or meets the gutter grade break at right angles where the curb is curved. On corners with a large curb radius, it will be necessary to indent the gutter grade break on one side of the curb ramp in order for the curb ramp to meet the gutter grade break at right angles.

A turning space must be provided at the top of perpendicular curb ramps. The turning space must be 1.2 meters (4 feet) minimum by 1.2 meters (4 feet) minimum, and is permitted to overlap other turning spaces and clear spaces. Where the turning space is constrained at the back of the sidewalk, the turning space must be 1.2 meters (4 feet) minimum by 1.5 meters (5 feet) minimum, with the 1.5 meters (5 feet) dimension provided in the direction of the ramp run.

A minimum running slope of 5 percent and a maximum running slope of 8.3 percent are specified for perpendicular curb ramps, and the ramp length is limited to 4.5 meters (15 feet). A maximum running slope of 2 percent is specified for the turning space at the top of the curb ramp. The running slope is measured parallel to the direction of pedestrian travel.

A maximum slope of 10 percent is specified for the flared sides of perpendicular curb ramps where a pedestrian circulation path crosses the curb ramp. The flared sides are part of the pedestrian circulation path, but are not part of the pedestrian access route. The slope of the flared sides is measured parallel to the curb line. The 10 percent maximum slope for the flared sides is the same as in the 2004 ADA and ABA Accessibility Guidelines (see 403.6). Transportation officials have reported that the 10 percent maximum slope for the flared sides can make it difficult to provide two perpendicular curb ramps at some street corners due to the width of the flared sides at the base of the curb ramp. The Access Board is considering increasing the maximum slope for the flared sides to 12.5 percent or 16.7 percent to address this issue.

Question 18. Comments are requested on whether the maximum slope for the flared sides of perpendicular curb ramps should be increased from 10 percent to 12.5 percent or 16.7 percent, and what impact such a change would have on providing two perpendicular curb ramps at street corners. Comments are also requested on any public safety issues that may arise from increasing the maximum slope for the flared sides from 10 percent to 12.5 percent or 16.7 percent.

Parallel Curb Ramps (R304.3)

Parallel curb ramps have a running slope that is in-line with the direction of sidewalk travel and lower the sidewalk to a level turning space where a turn is made to enter the pedestrian street crossing.

A turning space must be provided at the bottom of parallel curb ramps. The turning space must be 1.2 meters (4 feet) minimum by 1.2 meters (4 feet) minimum, and is permitted to overlap other turning spaces and clear spaces. Where the turning space is constrained on two or more sides, the turning space must be 1.2 meters (4 feet) minimum by 1.5 meters (5 feet) minimum, with the 1.5 meters (5 feet) dimension provided in the direction of the pedestrian street crossing.

A minimum running slope of 5 percent and a maximum running slope of 8.3 percent are specified for parallel curb ramps, and the ramp length is limited to 4.5 meters (15 feet). A maximum running slope of 2 percent is specified for the turning space at the bottom of the curb ramp. The running slope is measured parallel to the direction of pedestrian travel.

Blended Transitions (R304.4)

A maximum running slope of 5 percent is specified for blended transitions. The running slope is

[39] For additional information on the potential safety hazard of flangeway gaps, see ''Wheelchair Safety at Rail Level Crossings, International Review Working Paper'' (2003) at *http://www.transport.vic.gov.au/DOI/DOIElect.nsf/$UNIDS+for+Web+Display/43D9BDF138FFE9F9CA256D630011A607/$FILE/Rail_Crossing_Disability_Access-International_Review.pdf*; and ''Rail Crossing Disability Access Kit'' (2003) available at: *http://www.transport.vic.gov.au/DOI/DOIElect.nsf/$UNIDS+for+Web+Display/E995EA3FEB44F07CCA256D630011AD71/$FILE/Rail_Crossing_Disability_Access-Toolkit.pdf.*

[40] For announcement of award of research contact in 2010, see *http://www.volpe.dot.gov/sbir/ph1rec10.html* and *http://www.integran.com/news/IT%20USA%20DOT%20Flangeway%20Gap%20SBIR%20%20100323.pdf.* The Transportation Research Board has also developed research need statements for reducing flangeway gaps at railroad crossings. See ''Wheelchairs Crossing Flangeway Gaps at Railroad Crossings'' (2007); and ''Reducing Flangeway Gaps at Railroad Crossings to Better Accommodate Pedestrians'' (2008). The research need statements are available at: *http://rns.trb.org/dproject.asp?n=13462 and http://rns.trb.org/dproject.asp?n=17644.*

measured parallel to the direction of pedestrian travel.

Common Requirements (R304.5)

The clear width of curb ramp runs (excluding flared sides), blended transitions, and turning spaces must be 1.2 meters (4 feet) minimum. Grade breaks at the top and bottom of curb ramp runs must be perpendicular to the direction of the ramp run. Grade breaks are not permitted on the surface of ramp runs and turning spaces. Surface slopes that meet at grade breaks must be flush. A maximum cross slope of 2 percent is specified for curb ramps, blended transitions, and turning spaces. At pedestrian street crossings without yield or stop control and at midblock pedestrian street crossings, the cross slope is permitted to equal the street or highway grade. The cross slope is measured perpendicular to the direction of pedestrian travel. A maximum counter slope of 5 percent is specified for the gutter or street at the foot of curb ramp runs, blended transitions, and turning spaces. A clear space must be provided beyond the bottom of the grade break that is within the width of the pedestrian street crossing and wholly outside the parallel vehicle traffic lane. The clear space must be 1.2 meters (4 feet) minimum by 1.2 meters (4 feet) minimum.

R305 Detectable Warning Surfaces

Detectable warning surfaces consist of truncated domes aligned in a square or radial grid pattern. The dimensions for dome size and dome spacing are the same as in the 2004 ADA and ABA Accessibility Guidelines. The detectable warning surfaces must contrast visually with adjacent gutter, street or highway, or pedestrian access route surface, either light-on-dark or dark-on-light. The detectable warning surfaces must extend 610 millimeters (2 feet) minimum in the direction of pedestrian travel. At curb ramps and blended transitions, detectable warning surfaces must extend the full width of the ramp run (excluding flared sides), blended transition, or turning space. At pedestrian at-grade rail crossings not located within a street or highway, detectable warning surfaces must extend the full width of the crossing. At boarding platforms for buses and rail vehicles, detectable warning surfaces must extend the full length of the public use areas of the platform. At boarding and alighting areas at sidewalk or street level transit stops for rail vehicles, detectable warning surfaces must extend the full length of the transit stop. The proposed technical requirements specify where detectable warning surfaces must be placed on perpendicular curb ramps, parallel cub ramps, blended transitions, pedestrian refuge islands, pedestrian at-grade rail crossings, boarding platforms for buses and rail vehicles, and boarding and alighting areas at sidewalk or street level transit stops for rail vehicles.

R306 Pedestrian Street Crossings

The technical requirements in R306 address pedestrian signal phase timing and pedestrian street crossings at roundabouts and multi-lane channelized turn lanes.

Pedestrian Signal Phase Timing

Pedestrian signal phase timing must comply with referenced MUTCD standards and use a pedestrian clearance time that is calculated based on pedestrian walking speed of 1.1 meters/second (3.5 feet/second) or less.

Roundabouts

A roundabout is a circular intersection with yield control at entry, which permits a vehicle on the circulatory roadway to proceed, and with deflection of the approaching vehicle counter-clockwise around a central island (MUTCD section 1A.13). Pedestrian street crossings at roundabouts can be difficult for pedestrians who are blind or have low vision to identify because the crossings are located off to the side of the pedestrian circulation path around the street or highway. Where sidewalks are flush against the curb at roundabouts and pedestrian street crossing is not intended, a continuous and detectable edge treatment must be provided along the street side of the sidewalk at roundabouts. Detectable warning surfaces must not be used for edge treatment. Where chains, fencing, or railings are used for edge protection, the bottom edge of the treatment must be 380 millimeters (15 inches) maximum above the sidewalk to be detectable by cane.

The continuous traffic flow at roundabouts removes many of the audible cues that pedestrians who are blind use to navigate pedestrian street crossings. At roundabouts with multi-lane pedestrian street crossings, a pedestrian activated signal must be provided for each multilane segment of each crossing, including the splitter island (*i.e.,* median island used to separate opposing directions of traffic entering and exiting a roundabout, MUTCD section 1A.13). Transportation officials who commented on the 2002 draft guidelines expressed concern that signalization of roundabouts would interfere with the flow of traffic at roundabout intersections. Pedestrian Hybrid Beacons can be used at roundabouts. See MUTCD sections 4F.01 through 4F.03. Pedestrian Hybrid Beacons are traffic signals that consist of a yellow signal centered below two horizontally aligned red signals. The signals are normally dark (*i.e.,* not illuminated). The signals are initiated only upon pedestrian activation and can be timed to minimize the interruption of traffic. The signals cease operation after the pedestrian clears the crosswalk. When activated by a pedestrian, the following signals are displayed to drivers: a flashing yellow signal, then a steady yellow signal, then two steady red signals during the pedestrian walk interval, and then alternating flashing red signals during the pedestrian clearance interval. The following signals are displayed to pedestrians: a steady upraised hand (symbolizing DON'T WALK) when the flashing or steady yellow signal is operating, then a walking person (symbolizing WALK) when the steady red signals are operating, and then a flashing upraised hand (symbolizing DON'T WALK) when the alternating flashing red signals are operating. Transportation officials may request permission from the Federal Highway Administration to experiment with alternative signals at roundabouts (see MUTCD section 1A.10).[41]

Multi-Lane Channelized Turn Lanes

Pedestrian activated signals must be provided at pedestrian street crossings at multi-lane channelized turn lanes at roundabouts and other signalized intersections. The pedestrian activated signals must comply with MUTCD standards for accessible pedestrian signals and pedestrian pushbuttons.

Governmental Units Affected

The requirement for pedestrian activated signals at roundabouts with multi-lane pedestrian street crossings will affect state and local transportation departments that construct new roundabouts with multi-lane pedestrian street crossings. The Volpe Center estimated that state and local transportation departments construct 27 new roundabouts with multi-lane pedestrian street crossings on an annual basis.[42]

[41] The Federal Highway Administration has granted interim approval to Rectangular Flashing Rapid Beacons, which can be used at roundabouts. However, Rectangular Flashing Rapid Beacons do not provide positive indication to drivers to stop and positive indication to pedestrians that the walk interval has been actuated. Rectangular Flashing Rapid Beacons do not meet MUTCD standards for accessible pedestrian signals and pedestrian pushbuttons.

[42] The Volpe Center used the roundabout database at: *http://roundabout.kittelson.com/* to

Costs To Provide Pedestrian Activated Signals at Roundabouts With Multi-Lane Pedestrian Street Crossings

The Volpe Center estimated the cost to provide pedestrian activated signals at new roundabouts with multi-lane pedestrian street crossings to range from $90,000 to $230,000 per roundabout, and the total annual costs for requiring pedestrian activated signals at new roundabouts with multi-lane pedestrian street crossings to range from $2.4 million to $6.2 million.

Question 19. The Access Board seeks additional information on the number of roundabouts with multi-lane pedestrian street crossings that are newly constructed on an annual basis by state and local transportation departments, and the costs to provide pedestrian activated signals at newly constructed roundabouts with multi-lane pedestrian street crossings.

R307 Accessible Pedestrian Signals and Pedestrian Pushbuttons (See R209)

In the 2005 draft of the proposed guidelines, the technical requirements for accessible pedestrian signals and pedestrian pushbuttons were contained in Chapter R3. The proposed guidelines reference MUTCD standards for accessible pedestrian signals and pedestrian pushbuttons in the scoping requirements at R209. This section heading is included in Chapter R3 of the proposed guidelines to notify readers who were familiar with the 2005 draft of the proposed guidelines where to find the requirements for accessible pedestrian signals and pedestrian pushbuttons. This section heading will not be included in the final guidelines.

R308 Transit Stops and Transit Shelters

The technical requirements for transit stops and transit shelters are contained in R308 and adapt the technical requirements for transit facilities in the 2004 ADA and ABA Accessibility Guidelines to the public right-of-way.

Transit Stops (R308.1)

Boarding and alighting areas at sidewalk or street level transit stops must be 2.4 meters (8 feet) minimum measured perpendicular to the street or highway, and 1.5 meters (5 feet) minimum measured parallel to the street or highway. The grade of the boarding and alighting area parallel to the street or highway must be equal to street or highway grade to the extent practicable. The grade of the boarding and alighting area perpendicular to the street or highway must not exceed 2 percent. Where transit stops serve vehicles with more than one car, boarding and alighting areas serving each car must comply with these requirements.

Boarding platforms at transit stops must be positioned to coordinate with vehicles to minimize the vertical and horizontal gaps. The slope of boarding platforms must not exceed 2 percent in any direction. Where boarding platforms serve vehicles operating on existing track or existing street or highway, the slope of the platform parallel to the track or street or highway is permitted to equal the grade of the track or street or highway.

The surfaces of boarding and alighting areas and boarding platforms must comply with the technical requirements for surfaces (see R302.7). Boarding and alighting areas and boarding platforms must be connected to streets, sidewalks, or pedestrian circulation paths by a pedestrian access route.

Transit Shelters (R308.2)

Transit shelters must be connected by a pedestrian access route to boarding and alighting areas or boarding platforms. A clear space (see R404) must be provided entirely within the transit shelter. Where seating is provided within transit shelters, the clear space must be located either at the end of a seat, or not overlap the area within 460 millimeters (1.5 feet) from the front edge of the seat in order to not interfere with others using the seating. Environmental controls within transit shelters must be proximity actuated. Protruding objects within transit shelters must comply with the technical requirements for protruding objects (see R402).

The Access Board is considering whether to require a turning space in transit shelters. Transit shelter designs vary. Some transit shelters are enclosed on three or four sides, with an opening for ingress and egress. The turning space would be based on the 2004 ADA and ABA Accessibility Guidelines (see 304.3).[43] The turning space would be permitted to overlap the clear space within the transit shelter and the pedestrian access route, but would not be permitted to overlap the area within 460 millimeters (1.5 feet) from the front edge of seats in the transit shelter in order to not interfere with others using the seating. The portion of the turning space that does not overlap the clear space would be permitted to be outside the transit shelter.

Question 20. Comments are requested on whether a turning space should be required in transit shelters and what impact such a requirement would have on the design and placement of transit shelters?

R309 On-Street Parking Spaces

General (R309.1)

The technical requirements for accessible on-street parking spaces are contained in R309 and adapt the technical requirements for accessible parking spaces in the 2004 ADA and ABA Accessibility Guidelines to the public right-of-way.

Parallel Parking Spaces (R309.2)

Where the adjacent sidewalk or available right-of-way is more than 4.3 meters (14 feet) wide, an access aisle must be provided at street level for the entire length of each accessible parallel parking space. The access aisle must be 1.5 meters (5 feet) wide minimum and connect to a pedestrian access route. The access aisle must not encroach on the vehicular travel lane and comply with the technical requirements for surfaces (see R302.7). In alterations where the street or sidewalk adjacent to the parking spaces is not altered, an access aisle is not required provided the parking spaces are located at the end of the block face.

Where the adjacent sidewalk or available right-of-way is less than or equal to 4.3 meters (14 feet) wide, an access aisle is not required, but accessible parallel parking spaces must be located at the end of the block face.

Perpendicular and Angled Parking Spaces (R309.3)

An access aisle must be provided at street level for the entire length of each accessible perpendicular or angled parking space. The access aisle must be 2.4 meters (8 feet) wide minimum to accommodate vans with lifts, and connect to a pedestrian access route. Two accessible parking spaces are

estimate the number of new roundabouts with multi-lane pedestrian street crossings that are constructed on an annual basis. During the five-year period between 2005 and 2009, 435 new roundabouts were constructed, of which 117 were multi-lane. The data was adjusted for a small number of roundabouts that are listed in the database as having an ''unknown'' number of lanes and for roundabouts that do have any pedestrian facilities (*i.e.,* sidewalks and pedestrian street crossings).

[43] The 2004 ADA and ABA Accessibility Guidelines require a turning space to be either a circular space 1.5 meters (5 feet) minimum in diameter, or a T-shaped space within a square with sides 1.5 meters (5 feet) minimum where the arms and base of the T-Shaped space are 915 millimeters (3 feet) minimum. Each arm of the T-shaped space must be clear of obstructions 305 millimeters (1 foot) minimum in each direction, and the base must be clear of obstructions 610 millimeters (2 feet) minimum. A circular space is permitted to include knee and toe clearance. A T-shaped space is permitted to include knee and toe clearance only at the end of either the base or one arm.

permitted to share a common access aisle. The access aisle must be marked to discourage parking in the aisle and comply with the technical requirements for surfaces (see R302.7).

Curb Ramps and Blended Transitions (R309.4)

Curb ramps or blended transitions must connect the access aisle serving each accessible on-street parking space to the pedestrian access route. Curb ramps are not permitted within the access aisle. Parking spaces at the end of block face can be served by curb ramps or blended transitions at the pedestrian street crossing. Detectable warning surfaces are not required on curb ramps and blended transitions that connect the access aisle to the sidewalk, including where the sidewalk is at the same level as the parking spaces, unless the curb ramps and blended transitions also serve pedestrian street crossings.

Parking Meters and Parking Pay Stations (R309.5)

Operable parts of parking meters and parking pay stations that serve accessible on-street parking spaces must comply with technical requirements for operable parts in Chapter R4. Displays and information must be visible from a point located 1 meter (3.3 feet) maximum above the center of the clear space in front of the parking meter or parking pay station. At accessible parallel parking spaces, parking meters must be located at the head or foot of the space.

R310 Passenger Loading Zones

The technical requirements for accessible passenger loading zones are the same as in the 2004 ADA and ABA Accessibility Guidelines. A vehicular pull-up space 2.4 meters (8 feet) wide minimum and 6.1 meters (20 feet) long minimum must be provided at accessible passenger loading zones. An access aisle must be provided at the same level as the vehicle pull-up space. The access aisle must be 1.5 meters (5 feet) wide minimum, extend the entire length of the vehicle pull-up space, and connect to the pedestrian access route. The access aisle must be marked to discourage parking in the aisle and comply with the technical requirements for surfaces (see R302.7).

Chapter R4: Supplementary Technical Requirements

Chapter R4 contains supplementary technical requirements that are the same as in the 2004 ADA and ABA Accessibility Guidelines unless otherwise noted below.

R401 General

The supplementary technical requirements in Chapter R4 apply where required by scoping requirements in Chapter R2, or where referenced by another technical requirement in Chapters R3 or R4.

R402 Protruding Objects

Objects with leading edges between 685 millimeters (2.25 feet) and 2 meters (6.7 feet) above the finish surface must not protrude into pedestrian circulation paths more than 100 millimeters (4 inches). Post-mounted objects such as signs that are between 685 millimeters (2.25 feet) and 2 meters (6.7 feet) above the finish surface must not overhang pedestrian circulation paths more than 100 millimeters (4 inches) measured horizontally from the base of the post. The post base must be 64 millimeters (2.5 inches) thick minimum. Where objects are mounted between posts and the clear distance between the posts is more than 305 millimeters (1 foot), the lowest edge of the object must be 685 millimeters (2.25 feet) minimum or 2 meters (6.7 feet) maximum above the finish surface. The requirement for post-mounted objects differs from the 2004 ADA and ABA Accessibility Guidelines but is consistent with the MUTCD which requires the bottom of signs installed on the sidewalk to be 7 feet minimum above the sidewalk, and the bottom of secondary signs (*i.e.,* signs mounted below another sign) that are lower than 7 feet above the sidewalk to project not more than 4 inches into the sidewalk (see MUTCD section 2A.18).

Guardrails or other barriers to pedestrian travel must be provided where the vertical clearance on pedestrian circulation paths is less than 2 meters (6.7 feet) high. The leading edge of the guardrail or barrier must be 685 millimeters (2.25 feet) maximum above the finish surface.

R403 Operable Parts

An operable part is a component of an element used to insert or withdraw objects, or to activate, deactivate, or adjust the element (see R105.5). The technical requirements for operable parts apply to operable parts on accessible pedestrian signals and pedestrian pushbuttons (see R209) and parking meters and parking pay stations that serve accessible parking spaces (see R309.5). A clear space must be provided at operable parts (see R404). Operable parts must be located within the reach ranges (see R406). Operable parts must be operable with one hand and not require tight grasping, pinching, or twisting of the wrist. The force required to activate operable parts must be no more than 22 newtons (5 pounds).

R404 Clear Spaces

Clear spaces are required at operable parts (see R403.2), including accessible pedestrian signals and pedestrian pushbuttons (see R209) and parking meters and parking pay stations that serve accessible parking spaces (see R309.5). Clear spaces are also required at benches (see R212.6) and within transit shelters (see R308.2). Clear spaces must be 760 millimeters (2.5 feet) minimum by 1220 millimeters (4 feet) minimum. Additional maneuvering space must be provided where an element is confined on all or part of three sides. Clear spaces are permitted to include knee and toe clearance and to be positioned for either forward or parallel approach to an element, unless another requirement specifies otherwise. The running slope of clear spaces is permitted to be consistent with the grade of the adjacent pedestrian access route. This requirement differs from the 2004 ADA and ABA Accessibility Guidelines which does not permit slopes steeper than 2 percent at clear spaces. A 2 percent maximum cross slope is specified for clear spaces. Clear spaces must comply with the technical requirements for surfaces (see R302.7).

R405 Knee and Toe Clearance

The technical requirements for knee and toe clearance apply where space beneath an element is included as part of the clear space.

R406 Reach Ranges

Forward and side reach ranges must be between 380 millimeters (1.25 feet) and 1220 millimeters (4 feet) above the finish surface. The requirements for reach ranges differ from the 2004 ADA and ABA Accessibility Guidelines in that forward reach over an obstruction is not permitted, and side reach over an obstruction is permitted where the depth of the obstruction between the clear space and the element is 225 millimeters (10 inches) maximum.

R407 Ramps

R408 Stairways

R409 Handrails

R410 Visual Characters on Signs

R411 International Symbol of Accessibility

The technical requirements ramps, stairways, handrails, visual characters on signs, and the International Symbol of Accessibility are the same as in the

2004 ADA and ABA Accessibility Guidelines.

Other Issues

Rollability and Smoothness of Walking Surfaces

Rollability refers to the ease and comfort with which pedestrians using wheelchairs and other wheeled mobility devices can travel on walking surfaces. Rough or jointed walking surfaces can cause pedestrians using wheelchairs and other wheeled mobility devices to expend extra energy or pushing effort that makes it more difficult for them to use the walking surface, and the resulting surface vibration can cause discomfort or pain that may prevent them from using the walking surface all together. There are smoothness measures for road surfaces but no similar measures for walking surfaces. The Access Board is sponsoring preliminary research that will produce a plan for a test protocol and instrumentation to measure the rollability and smoothness of walking surfaces and to establish an index of surface vibration.

Question 21. The Access Board seeks information on related research and sources of expertise on measuring the rollability and smoothness of walking surfaces, including information from the medical community on the effects of surface vibration on individuals with disabilities.

Shared Streets

A shared street is a common space designed for use by pedestrians, bicyclists, and vehicles.[44] Shared streets typically do not have curbs and delineated sidewalks. Vehicles typically travel at low speeds on shared streets. Trees, planters, parking areas, and other obstacles may be placed on shared streets to slow vehicles. Shared streets can be in a commercial area or residential area. Shared streets are difficult for pedestrians who are blind or have low vision to navigate because of the absence of curbs and clearly delineated sidewalks.[45] The Pedestrian Accessibility and Movement Environment Laboratory at University College London has conducted limited research on the use of tactile surfaces to delineate the space on shared streets that is to be used exclusively by pedestrians, and not vehicles.[46] The tactile surfaces tested included raised truncated domes that, in the United States, are used as detectable warning surfaces on curb ramps and blended transitions to indicate the boundary between the pedestrian route and the vehicular route at pedestrian street crossings. Using detectable warning surfaces to facilitate wayfinding along shared streets would be expanding the use of such surfaces.

Question 22. The Access Board seeks information on the design of shared streets in the United States, and whether tactile surfaces or other design features are used to facilitate wayfinding along shared streets. The Access Board also seeks information about other research that is planned or underway on the use of tactile surfaces or other design features to facilitate wayfinding along shared streets.

Regulatory Process Matters

Executive Orders 12866 and 13563

The Office of Management and Budget has reviewed this proposed rule pursuant to Executive Orders 12866 and 13563.[47] The Access Board prepared a regulatory assessment of the potential costs and benefits of the proposed rule. The regulatory assessment is available on the Access Board Web site at: *http://www.access-board.gov/prowac/index. htm*, and is also available in the regulatory docket at *http://www.regulations.gov.* The information in the regulatory assessment is discussed in the preamble under Impacts on State and Local Governments and under the relevant requirements in the Section-by-Section Analysis. The information in the regulatory assessment is also summarized in the tables below, As indicated in the tables below, the regulatory assessment does not include estimates of the total annual costs for two of the requirements in the proposed guidelines that will have more than minimal impacts because information is not available to estimate the costs. Questions are included in the preamble seeking additional information to assist the Board to estimate the total annual costs of these two requirements and to refine the cost estimates for the other requirements in the proposed guidelines. Consequently, the Access Board has not determined whether the proposed guidelines are an economically significant regulatory action.[48] The Access Board will analyze the information received in response to the questions in the preamble. When the final guidelines are issued, the Access Board will revise the regulatory assessment and determine whether the guidelines are an economically significant regulatory action.

Baseline

All state transportation departments and most local transportation departments maintain design manuals and standard drawings for improvements in the public right-of-way. The local transportation department design manuals and standard drawings are generally consistent with their state transportation department design manuals and standard drawings. State and local transportation departments use publications issued by the American Association of State and Highway Transportation Officials (AASHTO) in their design manuals and standard drawings, including the ''Policy on Geometric Design of Highways and

[44] The Pedestrian and Bicycle Information Center provides information on shared streets on its Web site at: *http://www.walkinginfo.org/engineering/calming-street.cfm.*

[45] Focus groups and surveys of pedestrians who are blind or have low vision conducted in the United Kingdom and Netherlands document the difficulties that these pedestrians have using shared streets. See ''The Impact of Shared Surface Streets and Shared Use Pedestrian/Cycle Paths on the Mobility and Independence of Blind and Partially Sighted People'' (2010); ''Shared Surface Street Design Research Project, The Issues: Report of Focus Groups'' (2006); and ''Shared Surface Street Design: Report of Focus Groups Held in Holland'' (2006). The reports are available on the Guide Dogs for the Blind Association Web site at: *http://www.guidedogs.org.uk/sharedstreets/index.php?id=203.*

[46] ''Shared Space Delineators, Are They Detectable?'' (2010) at *http://www.tap.iht.org/objects_store/201004/TfL%20Report%2020100415.pdf.* See also ''Testing Proposed Delineators to Demarcate Pedestrian Paths in a Shared Space Environment, Report of Design Trials Conducted at University College London'' (2008) available on the Guide Dogs for the Blind Association Web site at: *http://www.guidedogs.org.uk/sharedstreets/index.php?id=203.*

[47] Executive Orders 12866 and 13563 establish and reaffirm principles of regulation that direct Federal agencies among other things to: ''(1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.'' Executive Order 13563, section 1(b).

[48] A regulatory action is economically significant if it is anticipated to ''[h]ave an annual effect on the economy of $100 million or more'' or to ''adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government communities.'' Executive Order 12866, section 2(f)(1).

Streets'' (2004) (commonly referred to as the ''AASHTO Green Book'') and the ''Guide for the Planning, Design, and Operation of Pedestrian Facilities'' (2004) which incorporate accessibility in the design of sidewalks and other pedestrian facilities.[49] The Federal Highway Administration as part of its stewardship and oversight responsibilities has also worked with state transportation departments to incorporate accessibility in their design manuals and standards drawings. The Federal Highway Administration has issued guidance that the accessibility standards in the Department of Justice regulations implementing Title II of the Americans with Disabilities Act and the Department of Transportation regulations implementing Section 504 are to be used to the extent feasible for the design of pedestrian facilities in the public right-of-way until new accessibility standards are adopted for these facilities.

In the absence of the proposed guidelines, the regulatory assessment assumes that state and local transportation departments will use the DOJ 2010 Standards in the Department of Justice regulations implementing Title II of the Americans with Disabilities Act to the extent feasible when designing, constructing, or altering pedestrian facilities in the public right-of-way, consistent with the guidance issued by the Federal Highway Administration, as well as other applicable standards and industry practices. An analysis of the proposed guidelines compared to the DOJ 2010 Standards, other applicable standards, and industry practices is included in the appendix to the regulatory assessment. The analysis identified four requirements in the proposed guidelines that will have more than minimal impacts on state and local transportation departments. The factors used to identify whether the requirements in the proposed guidelines will have more than minimal impacts are discussed in the regulatory assessment and in the preamble under Impacts on State and Local Governments. The four requirements in the proposed guidelines that will have more than minimal impacts on state and local transportation departments are summarized in the table below, along with a description of the governmental units affected by proposed requirements and questions in the preamble to the proposed guidelines that seek additional information on the governmental units affected.

REQUIREMENTS IN PROPOSED GUIDELINES THAT WILL HAVE MORE THAN MINIMAL IMPACTS ON STATE AND LOCAL TRANSPORTATION DEPARTMENTS

Requirement	Governmental units affected
Detectable warning surfaces required on newly constructed and altered curb ramps and blended transitions at pedestrian street crossings (R208.1 and R305).	Will affect state and local transportation departments that do not currently provide detectable warning surfaces on curb ramps. All state transportation departments currently specify detectable warning surfaces on curb ramps in their standard drawings; most local transportation departments maintain standard drawings that are consistent with standard drawings maintained by their state transportation departments. Questions 4, 5, and 6 in preamble seek information on state and local transportation departments that do not currently provide detectable warning surfaces on curb ramps.
Accessible pedestrian signals and pushbuttons required when pedestrian signals newly installed or replaced at signalized intersections (R209).	Will affect state and local transportation departments that do not currently provide accessible pedestrian signals and pedestrian pushbuttons when pedestrian signals are newly installed or replaced at signalized intersections. Some state and local transportation departments currently provide accessible pedestrian signals and pedestrian pushbuttons when pedestrian signals are newly installed or replaced at signalized intersections; TEA–21 (23 U.S.C. 217 (g)) directed that audible traffic signals be included in transportation plans and projects where appropriate. Question 9 in preamble seeks information on state and local transportation departments that currently provide accessible pedestrian signals and pedestrian pushbuttons when pedestrian signals are newly installed or replaced at signalized intersections.
Maximum cross slope of 2 percent required on pedestrian access routes, including within pedestrian street crossings with yield or stop control (R204.3 and R302.6).	Will affect state and local transportation departments that construct new tabled intersections in hilly urban areas which contain pedestrian street crossings with yield or stop control. Question 14 in preamble seeks information on the current design policies and practices of state and local transportation departments with respect to tabling newly constructed intersections in hilly urban areas, particularly with respect to extending the tabling to pedestrian street crossings with yield or stop control.
Pedestrian activated signals required at roundabouts with multi-lane pedestrian crossings (R206 and R306.3.2).	Will affect state and local transportation departments that construct new roundabouts with multi-lane pedestrian street crossings.

The Access Board entered into an interagency agreement with the Volpe National Transportation Systems Center (Volpe Center) to gather data and prepare cost estimates for the regulatory assessment. The cost estimates prepared by the Volpe Center are summarized in the table below, along with questions in the preamble to the proposed guidelines that seek additional information to refine the cost estimates.

[49] See footnote 20 for additional information on the AASHTO publications and accessibility.

ESTIMATED TOTAL ANNUAL COSTS FOR REQUIREMENTS THAT WILL HAVE MORE THAN MINIMAL IMPACTS ON STATE AND LOCAL TRANSPORTATION DEPARTMENTS

Requirement	Additional costs per element or facility due to requirement	Number of elements or facilities constructed or altered on annual basis	Total annual costs for requirement
Detectable warning surfaces required on newly constructed and altered curb ramps and blended transitions at pedestrian street crossings (R208.1 and R305).	$48 to $240 for detectable warning materials for typical curb ramp.	No information available	No estimate provided.
	Question 8 in preamble seeks additional information on costs for detectable warning materials and installation of the materials on typical curb ramp.	Question 7 in preamble seeks information on number of curb ramps that are constructed or altered on an annual basis in the public right-of-way.	Total annual costs will depend on number of state and local transportation departments that do not currently provide detectable warning surfaces on curb ramps, and number of curb ramps that they construct or alter on an annual basis.
Accessible pedestrian signals and pushbuttons required when pedestrian signals newly installed or replaced at signalized intersections (R209).	$3,600 per signalized intersection	Pedestrian signals newly installed or replaced at 13,095 signalized intersections on an annual basis.	$47 million.
	Question 10 in preamble seeks additional information on costs for providing accessible pedestrian signals and pedestrian pushbuttons at signalized intersections.		
Maximum cross slope of 2 percent required on pedestrian access routes, including within pedestrian street crossings with yield or stop control (R204.3 and R302.6).	$60,000 per tabled intersection	No information available	No estimate provided.
	Question 15 in preamble seeks additional information on costs to extend tabling of newly constructed intersections in hilly urban areas to pedestrian street crossings with yield or stop control.	Question 16 in preamble seeks information on number of tabled intersections which contain pedestrian street crossings with yield or stop control that are newly constructed in hilly urban areas on an annual basis.	Total annual costs will depend on number of tabled intersections which contain pedestrian street crossings with yield or stop control that are newly constructed in hilly urban areas on an annual basis.
Pedestrian activated signals required at roundabouts with multi-lane pedestrian crossings (R206 and R306.3.2).	$90,000 to $230,000 per roundabout.	27 new roundabouts with multi-lane pedestrian street crossings constructed on an annual basis.	$2.4 million to $6.2 million.
	Question 19 in preamble seeks additional information on costs to provide pedestrian activated signals at roundabouts with multi-lane pedestrian crossings.		

Benefits

The proposed guidelines will benefit pedestrians with disabilities. The U.S. Census Bureau reports that 54.4 million Americans, about one in five U.S. residents, reported some level of disability in 2005.[50] The number of individuals with disabilities is almost equal to the combined total population of California and Florida. The U.S. Census Bureau provides this breakdown of the population of people aged 15 and older:

- 27.4 million (11.9 percent) had difficulty with ambulatory activities of the lower body;
- 22.6 million people (9.8 percent) had difficulty walking a quarter of a mile;
- 21.8 million (9.4 percent) had difficulty climbing a flight of stairs;
- 10.2 million (4.4 percent) used a cane, crutches, or walker to assist with mobility;
- 3.3 million (1.4 percent) used a wheelchair or other wheeled mobility device; and
- 7.8 million (3 percent) had difficulty seeing words or letters in ordinary newspaper print, including 1.8 million who are completely unable to see.

Executive Order 13563 states that to the extent permitted by law Federal agencies must ''propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify)'' and that ''where appropriate and permitted by law, each agency may consider and (discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.'' The proposed guidelines promote important societal values that are difficult or impossible to quantify. As discussed

[50] ''Americans with Disabilities: 2005'' (2008) available on the Web at: *http://www.census.gov/prod/2008pubs/p70-117.pdf.*

above under the Need for Rulemaking, when enacting the Americans with Disabilities Act, Congress found ''the discriminatory effects of architectural, transportation, and communication barriers'' to be a continuing problem that ''denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.'' 42 U.S.C. 12101(a)(5) and (9). Congress declared that ''the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency.'' 42 U.S.C. 12101(a)(8). The proposed guidelines promote the goals declared by Congress by eliminating the discriminatory effects of architectural, transportation, and communication barriers in the design and construction of pedestrian facilities in the public right-of-way. The proposed guidelines are also important to achieving the benefits of the other parts of the Americans with Disabilities Act. As the House Report for the Americans with Disabilities Act stated, ''[t]he employment, transportation, and public accommodation sections * * * would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets.'' H.R. 485, 101st Cong., 2d Sess. 84 (1990).

Question 23. Comments are requested on whether the proposed guidelines have other quantitative or qualitative benefits in addition to those discussed above.

Regulatory Flexibility Act: Initial Regulatory Flexibility Analysis

The impacts of the proposed guidelines on small governmental jurisdictions with a population of less than 50,000 are discussed below. This information is required by the Regulatory Flexibility Act (5 U.S.C. 603).

Reasons for Issuing Proposed Accessibility Guidelines

The Access Board's current accessibility guidelines, the 2004 ADA and ABA Accessibility Guidelines, were developed primarily for buildings and facilities on sites. Some of the requirements in the 2004 ADA and ABA Accessibility Guidelines can be readily applied to pedestrian facilities in the public right-of-way, but other requirements need to be adapted for pedestrian facilities in the public right-of-way. The proposed guidelines are developed specifically for pedestrian facilities in the public right-of-way and address conditions and constraints that exist in the public right-of-way.

Objectives of, and Legal Basis for, Proposed Accessibility Guidelines

The Access Board is required to issue accessibility guidelines by the Americans with Disabilities Act (42 U.S.C. 12204) and Section 502 of the Rehabilitation Act (29 U.S.C. 792) to ensure that newly constructed and altered facilities are readily accessible to and usable by pedestrians with disabilities.

Small Governmental Jurisdictions Affected by Proposed Accessibility Guidelines

The number of small governmental jurisdictions with a population less than 50,000 affected by the proposed guidelines is shown in the table below.

Governmental jurisdictions	Population less than 50,000
County	2,178
Municipal	18,824
Town or Township	16,371
Total	37,375

Source: U.S. Census Bureau 2002 Census of Governments available at: *http://www.census.gov/prod/2003pubs/gc021x1.pdf.*

Almost 70 percent of municipal governments (13,038) and more than 75 percent of towns and townships (12,331) have a population of less than 2,500. Many of these small governmental jurisdictions are located in rural areas, which generally do not construct pedestrian transportation networks (*e.g.,* sidewalks, pedestrian street crossings, and pedestrian signals).

Compliance Requirements

The proposed accessibility guidelines address the design, construction, and alteration of pedestrian facilities in the public right-of-way, including sidewalks, pedestrian street crossings, pedestrian overpasses and underpasses, curb ramps and blended transitions at pedestrian street crossings, pedestrian signals, street furniture (*i.e.,* drinking fountains, public toilet facilities, tables, counters, and benches), pedestrian signs, transit stops and transit shelters for buses and light rail vehicles, on-street parking that is marked or metered, and passenger loading zones. The Section-by-Section Analysis of the preamble describes the proposed accessibility guidelines. Compliance with the proposed accessibility guidelines is not mandatory until they are adopted, without or without additions and modifications, as accessibility standards by other Federal agencies. There are no reporting or recordkeeping requirements.

Other Federal Rules

The Department of Justice, Department of Transportation, and General Services Administration are responsible for issuing accessibility standards that are consistent with the accessibility guidelines issued by the Access Board and are expected to conduct rulemaking to adopt the proposed guidelines, with or without additions and modifications, as accessibility standards in regulations implementing Title II of the Americans with Disabilities Act (28 CFR part 36 and 49 CFR part 37), Section 504 of the Rehabilitation Act (49 CFR part 27), and the Architectural Barriers Act (41 CFR part 102). Additional information on these laws and regulations is provided under the Statutory and Regulatory Background in the preamble to the proposed guidelines.

Significant Alternatives Which Minimize Any Significant Economic Impacts on Small Entities

The regulatory assessment analyzes the following four requirements in the proposed guidelines that will have more than minimal impacts on state and local transportation departments:

- *Detectable warning surfaces required on newly constructed and altered curb ramps and blended transitions at pedestrian street crossings (see R208.1 and R305).* Detectable warning surfaces consist of small truncated domes that are detectable underfoot. Where curb ramps or blended transitions are provided at pedestrian street crossings, detectable warning surfaces indicate the boundary between a pedestrian route and a vehicular route for pedestrians who are blind or have low vision in place of the missing curb.
- *Accessible pedestrian signals and pedestrian pushbuttons required when pedestrian signals newly installed or replaced at signalized intersections (see R209).* Accessible pedestrian signals and pedestrian pushbuttons communicate the information about the WALK and DON'T WALK intervals at signalized intersections in non-visual formats (*i.e.,* audible tones and vibrotactile surfaces) to pedestrians who are blind or have low vision.
- *Maximum cross slope of 2 percent required on pedestrian access routes, including within pedestrian street crossings with yield or stop control.* Cross slope is the slope perpendicular to

the direction of pedestrian travel. Cross slope impedes travel by pedestrians who use wheeled mobility devices since energy must be expended to counteract the perpendicular force of the cross slope. The 2 percent maximum cross slope required on pedestrian access routes has more than minimal impacts on the construction of new tabled intersections in hilly urban areas that contain pedestrian street crossings with yield or stop control where vehicles slow or stop before proceeding through the intersection.

• *Pedestrian activated signals at roundabouts with multi-lane pedestrian street crossings.* A roundabout is a circular intersection with yield control at entry, which permits a vehicle on the circulatory roadway to proceed, and with deflection of the approaching vehicle counter-clockwise around a central island. Pedestrian activated signals are required at roundabouts with multi-lane pedestrian street crossings to facilitate crossing by pedestrians who are blind or have low vision. Small governmental jurisdictions with a population less than 50,000 are not likely to construct roundabouts with multi-lane pedestrian street crossings and will not be affected by this requirement.

There are no significant alternatives that will minimize any significant impacts of these requirements on small governmental jurisdictions and achieve the objectives of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Architectural Barriers Act to eliminate the discriminatory effects of architectural, transportation, and communication barriers in the design and construction of pedestrian facilities in the public right-of-way.

Executive Order 13132: Federalism

The proposed rule adheres to the fundamental federalism principles and policy making criteria in Executive Order 13132. The proposed rule is issued under the authority of the Americans with Disabilities Act, civil rights legislation that was enacted by Congress pursuant to its authority to enforce the Fourteenth Amendment to the U.S. Constitution and to regulate commerce. The Americans with Disabilities Act was enacted ''to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.'' 42 U.S.C. 12101 (b) (1). The Americans with Disabilities Act recognizes the authority of State and local governments to enact and enforce laws that ''provide for greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter.'' 42 U.S.C. 12201 (b). The proposed rule is based on the recommendations of a Federal advisory committee which included representatives of state and local governments. The Access Board made drafts of the proposed rule available for public review and comment. State and local governments provided comments on the drafts of the proposed rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or enforce statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, handicap, or disability. Since the proposed rule is issued under the Americans with Disabilities Act, which prohibits discrimination on the basis of disability, an assessment of the rule's effect on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

List of Subjects in 36 CFR Part 1190

Buildings and facilities, Civil rights, Individuals with disabilities, Transportation.

Nancy Starnes,
Chair.

For the reasons stated in the preamble, the Access Board proposes to add part 1190 to title 36 of the Code of Federal Regulations to read as follows:

PART 1190—ACCESSIBILITY GUIDELINES FOR PEDESTRIAN FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Sec.
1190.1 Accessibility guidelines.
Appendix to Part 1190—Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way

Authority: 29 U.S.C. 792 and 42 U.S.C. 12204.

§ 1190.1 Accessibility Guidelines.

The accessibility guidelines for pedestrian facilities in the public right-of-way are set forth in the appendix to this part. When the guidelines are adopted, with or without additions and modifications, as accessibility standards in regulations issued by other Federal agencies implementing the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Architectural Barriers Act, compliance with the accessibility standards is mandatory. A copy of the guidelines with figures is available on the Access Board Web site at: *http://www.access-board.gov/prowac/nprm.htm*. Except for the International Symbol of Accessibility in Figure R411, which is included in the appendix to this part, the figures are for illustration purposes only and do not establish requirements.

Appendix to Part 1190—Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way

CHAPTER R1: APPLICATION AND ADMINISTRATION

R101 Purpose

R101.1 General. This document contains scoping and technical requirements to ensure that facilities for pedestrian circulation and use located in the public right-of-way are readily accessible to and usable by pedestrians with disabilities. Compliance with this document is mandatory when required by regulations issued by federal agencies that include accessibility standards for the design, construction, and alteration of pedestrian facilities in the public right-of-way.

Advisory R101.1 General. Sections marked as ''advisory'' contain advisory information related to the preceding section. Advisory sections do not establish mandatory requirements. Some advisory sections reference related mandatory requirements to alert readers about those requirements.

R101.2 Effect on Existing Facilities. This document does not address existing facilities unless the facilities are included within the scope of an alteration undertaken at the discretion of a covered entity.

Advisory R101.2 Effect on Existing Facilities. The Department of Justice regulations implementing Title II of the Americans with Disabilities Act contain requirements for state and local governments regarding program accessibility and existing facilities. See 28 CFR 35.150. The Department of Transportation regulations implementing Section 504 of the Rehabilitation Act also contain requirements for recipients of federal financial assistance from the Department regarding compliance planning. See 49 CFR 27.11(c).

R102 Equivalent Facilitation. The use of alternative designs, products, or technologies that result in substantially equivalent or greater accessibility and usability than the requirements in this document is permitted.

R103 Conventions

R103.1 Conventional Industry Tolerances. Dimensions are subject to conventional industry tolerances except where dimensions are stated as a range.

Advisory R103.1.1 Conventional Industry Tolerances. Conventional industry tolerances include tolerances for field conditions and tolerances that may be a necessary consequence of a particular manufacturing process. Conventional industry tolerances do not apply to design work.

R103.2 Calculation of Percentages. Where the required number of elements or facilities to be provided is determined by calculations of ratios or percentages and remainders or fractions result, the next greater whole number of such elements or facilities shall be

provided. Where the determination of the required size or dimension of an element or facility involves ratios or percentages, rounding down for values less than one half is permitted.

R103.3 Units of Measurement. Measurements are stated in metric and U.S. customary units. The values stated in each system (metric and U.S. customary units) may not be exact equivalents, and each system shall be used independently of the other.

Advisory R103.3 Units of Measurement. Users should work entirely within one system of measurement, either metric or U.S. customary units. Combining values from the two systems may result in non-compliance.

R104 Referenced Standards

R104.1 Incorporation by Reference. The specific editions of the standards listed in R104.2 are incorporated by reference in this document and are part of the requirements to the prescribed extent of each such reference. The Director of the Federal Register has approved the standards for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the referenced standards may be inspected at the Access Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004; or at the National Archives and Records Administration (NARA). For information on the availability of the referenced standards at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

R104.2 MUTCD. The portions of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2009 Edition, that are incorporated by reference in this document consist of definitions (see R105.2) and standard statements, as defined in section 1A.13 of the MUTCD (see R205, R209, and R306.3). Guidance, option, and support statements, as defined in section 1A.13 of the MUTCD, shall be used to assist in the interpretation of the standard statements. Where there are differences between this document and the referenced standards, this document applies. The MUTCD is available on the Federal Highway Administration Web site at *http://mutcd.fhwa.dot.gov.* Printed copies may be purchased from the American Association of State Highway and Transportation Officials, 444 N Capitol Street, NW., Washington, DC 20001 (*http://www.transportation.org/*).

Advisory R104.2 MUTCD. MUTCD definitions and standard statements are referenced in the following sections of this document:

- R105.2 references definitions in section 1A.13 of the MUTCD;
- R205 references standard statements in sections 6D.01, 6D.02, 6G.05, 6F.63, 6F.68, and 6F.71 of the MUTCD for providing alternate pedestrian access routes when a pedestrian circulation path is temporarily closed;
- R209 references standard statements in sections 4E.08 through 4E.13 of the MUTCD for accessible pedestrian signals and pedestrian pushbuttons; and
- R306.2 references standard statements in section 4E.06 of the MUTCD for pedestrian signal phase timing.

R105 Definitions

R105.1 General. For the purpose of this document, the terms defined in R105.5 have the indicated meaning.

R105.2 Terms Defined in Referenced Standards. Terms used in specific sections of the MUTCD that are incorporated by reference in this document shall have the meaning specified in section 1A.13 of the MUTCD (incorporated by reference, see R104.2). In addition, the following terms shall have the meaning specified in section 1A.13 of the MUTCD (incorporated by reference, see R104.2): highway, intersection, island, median, pedestrian, roundabout, sidewalk, splitter island, and street.

R105.3 Undefined Terms. The meaning of terms not specifically defined in R105.5, the referenced standards, or regulations issued by Federal agencies that adopt this document as accessibility standards shall be as defined by collegiate dictionaries in the sense that the context implies.

R105.4 Interchangeability. Words, terms, and phrases used in the singular include the plural and those used in the plural include the singular.

R105.5 Defined Terms.

Accessible. Describes a facility in the public right-of-way that complies with this document.

Alteration. A change to a facility in the public right-of-way that affects or could affect pedestrian access, circulation, or use. Alterations include, but are not limited to, resurfacing, rehabilitation, reconstruction, historic restoration, or changes or rearrangement of structural parts or elements of a facility.

Blended Transition. A raised pedestrian street crossing, depressed corner, or similar connection between the pedestrian access route at the level of the sidewalk and the level of the pedestrian street crossing that has a grade of 5 percent or less.

Cross Slope. The grade that is perpendicular to the direction of pedestrian travel.

Curb Line. A line at the face of the curb that marks the transition between the curb and the gutter, street, or highway.

Curb Ramp. A ramp that cuts through or is built up to the curb. Curb ramps can be perpendicular or parallel, or a combination of parallel and perpendicular ramps.

Element. An architectural or mechanical component of a building, facility, space, site, or public right-of-way.

Facility. All or any portion of buildings, structures, improvements, elements, and pedestrian or vehicular routes located in the public right-of-way.

Grade Break. The line where two surface planes with different grades meet.

Operable Part. A component of an element used to insert or withdraw objects, or to activate, deactivate, or adjust the element.

Pedestrian Access Route. A continuous and unobstructed path of travel provided for pedestrians with disabilities within or coinciding with a pedestrian circulation path.

Pedestrian Circulation Path. A prepared exterior or interior surface provided for pedestrian travel in the public right-of-way.

Public Right-of-Way. Public land or property, usually in interconnected corridors, that is acquired for or dedicated to transportation purposes.

Qualified Historic Facility. A facility that is listed in or eligible for listing in the National Register of Historic Places, or designated as historic under an appropriate state or local law.

Running Slope. The grade that is parallel to the direction of pedestrian travel.

Vertical Surface Discontinuities. *Vertical differences in level between two adjacent* surfaces.

CHAPTER R2: SCOPING REQUIREMENTS

R201 Application

R201.1 Scope. All newly constructed facilities, altered portions of existing facilities, and elements added to existing facilities for pedestrian circulation and use located in the public right-of-way shall comply with the requirements in this document.

Advisory R201.1 Scope. The requirements in this document are to be applied to all areas of a facility within the scope of the project. Where multiple features of the same type are provided, such as on-street parking spaces, and a percentage of the features are required to be accessible, only the required number of features must comply with the technical requirements in this document and be connected to a pedestrian access route. Where elements are provided on a site that is a designated portion of a public right-of-way, the elements are required to comply with the applicable requirements in this document instead of the requirements in the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities and the Architectural Barriers Act Accessibility Guidelines (36 CFR part 1191).

R201.2 Temporary and Permanent Facilities. The requirements in this document shall apply to temporary and permanent facilities in the public right-of-way.

Advisory R201.2 Temporary and Permanent Facilities. Temporary pedestrian circulation paths around work zones and portable public toilets are examples of temporary facilities in the public right-of-way that are covered by the requirements in this document.

R201.3 Buildings and Structures. Buildings and structures in the public right-of-way that are not covered by the requirements in this document shall comply with the applicable requirements in 36 CFR part 1191.

Advisory R201.3 Buildings and Structures. Towers and temporary performance stages and reviewing stands are examples of structures that may be provided in the public right-of-way and are not covered by the requirements in this document. These structures are required to comply with the applicable requirements in the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities and the Architectural Barriers Act Accessibility Guidelines (36 CFR part 1191).

R202 Alterations and Elements Added to Existing Facilities

R202.1 General. Alterations and elements added to existing facilities shall comply with R202. Where elements are altered or added and the pedestrian circulation path to the altered or added elements is not altered, the pedestrian circulation path is not required to comply with R204.

Advisory R202.1 General. Where possible, added elements should be located on an existing pedestrian access route.

R202.2 Added Elements. Where elements are added to existing facilities, the added elements shall comply with the applicable requirements for new construction.

R202.3 Alterations. Where existing elements, spaces, or facilities are altered, each altered element, space, or facility within the scope of the project shall comply with the applicable requirements for new construction.

Advisory R202.3 Alterations. The alteration of multiple elements or spaces within a facility may provide a cost-effective opportunity to make the entire facility or a significant portion of the facility accessible.

R202.3.1 Existing Physical Constraints. Where existing physical constraints make it impracticable for altered elements, spaces, or facilities to fully comply with the requirements for new construction, compliance is required to the extent practicable within the scope of the project. Existing physical constraints include, but are not limited to, underlying terrain, right-of-way availability, underground structures, adjacent developed facilities, drainage, or the presence of a notable natural or historic feature.

R202.3.2 Transitional Segments. Transitional segments of pedestrian access routes shall connect to existing unaltered segments of pedestrian circulation paths and shall comply with R302 to the extent practicable.

R202.3.3 Reduction in Access Prohibited. An alteration shall not decrease or have the effect of decreasing the accessibility of a facility or an accessible connection to an adjacent building or site below the requirements for new construction in effect at the time of the alteration.

Advisory R202.3.3 Reduction in Access Prohibited. Sidewalk improvements that correct existing excessive cross slope should be carefully planned to avoid creating excessive slope in curb ramps or adding a step at existing building entrances. Solutions may include:

- Split sidewalks that serve building entrances and street or highway at separate levels;
- Sidewalks with greater cross slope along the curb and pedestrian access routes with lesser cross slope along building fronts;
- Pedestrian access routes along the curb and ramped entrances to buildings.

R202.3.4 Alterations to Qualified Historic Facilities. Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with a requirement would threaten or destroy historically significant features of a qualified historic facility, compliance shall be required to the extent that it does not threaten or destroy historically significant features of the facility.

Advisory R202.3.4 Alterations to Qualified Historic Facilities. Where there is a federal agency ''undertaking'', as defined in 36 CFR 800.16 (y), the requirements in section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and 36 CFR part 800 apply. Location of a facility within an historic district by itself does not excuse compliance with the requirements in this document. The State Historic Preservation Officer or Advisory Council on Historic Preservation must determine that compliance would threaten or destroy historically significant features of the facility. Reproductions or replications of historic facilities are not qualified historic facilities.

R203 Machinery Spaces. Vaults, tunnels, and other spaces used by service personnel only for maintenance, repair, or monitoring are not required to comply with this document.

R204 Pedestrian Access Routes

R204.1 General. Pedestrian access routes shall be provided in accordance with R204 and shall comply with R302.

Advisory R204.1 General. The Federal Highway Administration (FHWA) has issued guidance on the obligations of state and local governments to keep pedestrian access routes open and usable throughout the year, including snow and debris removal. The guidance is available at FHWA's Web site: *http://www.fhwa.dot.gov/civilrights/programs/ada_sect504qa.htm.*

R204.2 Sidewalks. A pedestrian access route shall be provided within sidewalks and other pedestrian circulation paths located in the public right-of-way. The pedestrian access route shall connect to accessible elements, spaces, and facilities required by this document and to accessible routes required by section 206.2.1 of appendix B to 36 CFR part 1191 or section F206.2.1 of appendix C to 36 CFR 1191 that connect building and facility entrances to public streets and sidewalks.

Advisory R204.2 Sidewalks. The accessible elements, spaces, and facilities located in the public right-of-way that pedestrian access routes must connect to include accessible pedestrian signals and pedestrian pushbuttons (see R209), street furniture (see R212), boarding and alighting areas and boarding platforms at transit stops (see R213 and R308.1.3.2), transit shelters (see R213 and R308.2), accessible on-street parking spaces (see R214 and R309), parking meters and parking pay stations serving accessible parking spaces (see R309.6), and accessible passenger loading zones (see R215 and R310).

R204.3 Pedestrian Street Crossings. A pedestrian access route shall be provided within pedestrian street crossings, including medians and pedestrian refuge islands, and pedestrian at-grade rail crossings. The pedestrian access route shall connect departure and arrival sidewalks.

R204.4 Pedestrian Overpasses and Underpasses. A pedestrian access route shall be provided within overpasses, underpasses, bridges, and similar structures that contain pedestrian circulation paths. Where an overpass, underpass, bridge, or similar structure is designed for pedestrian use only and the approach slope to the structure exceeds 5 percent, a ramp, elevator, limited use/limited application elevator, or platform lift shall be provided. Elevators and platform lifts shall be unlocked during the operating hours of the facility served.

Advisory R204.4 Pedestrian Overpasses and Underpasses. Where an overpass, underpass, bridge, or similar structure is designed for both pedestrian and vehicle use and the pedestrian access route is contained within the street or highway right-of-way, the grade of the pedestrian access route must not exceed the general grade established for the adjacent street or highway (see R302.5). Where the pedestrian access route is not contained within the street or highway right-of-way, the grade of the pedestrian access route must be 5 percent maximum (see R302.5). Where pedestrian overpasses or underpasses provide an alternative pedestrian circulation path to street level crossings, both the pedestrian overpass or underpass and the street level crossing must contain a pedestrian access route. State and local governments can provide a ramp, elevator, or lift at overpasses and underpasses designed for pedestrian use only. Long ramps present difficulties for some pedestrians with disabilities and can require snow clearance. Elevators or lifts can require maintenance.

R205 Alternate Pedestrian Access Routes. When a pedestrian circulation path is temporarily closed by construction, alterations, maintenance operations, or other conditions, an alternate pedestrian access route complying with sections 6D.01, 6D.02, and 6G.05 of the MUTCD (incorporated by reference, see R104.2) shall be provided. Where provided, pedestrian barricades and channelizing devices shall comply with sections 6F.63, 6F.68, and 6F.71 of the MUTCD (incorporated by reference, see R104.2).

Advisory R205 Alternate Pedestrian Access Routes. Section 6G.05 of the MUTCD recommends that whenever possible work should be done in a manner that does not create a need to detour pedestrians from existing pedestrian routes. Extra distance and additional pedestrian street crossings add complexity to a trip and increase exposure of risk to accidents. Sections 6D.01and 6G.05 of the MUTCD require alternate pedestrian routes to be accessible and detectable, including warning pedestrians who are blind or have low vision about sidewalk closures. Proximity-actuated audible signs are a preferred means to warn pedestrians who are blind or have low vision about sidewalk closures.

R206 Pedestrian Street Crossings. Pedestrian street crossings shall comply with R306.

Advisory R206 Pedestrian Street Crossings. All pedestrian street crossings must be accessible to pedestrians with disabilities. If pedestrian crossing is prohibited at certain locations, ''No Pedestrian Crossing'' signs should be provided along with detectable features, such as grass strips, landscaping, planters, chains, fencing, railings, or other barriers.

R207 Curb Ramps and Blended Transitions

R207.1 General. A curb ramp, blended transition, or a combination of curb ramps and blended transitions complying with R304 shall connect the pedestrian access routes at each pedestrian street crossing. The curb ramp (excluding any flared sides) or blended transition shall be contained wholly within the width of the pedestrian street crossing served.

R207.2 Alterations. In alterations where existing physical constraints prevent compliance with R207.1, a single diagonal curb ramp shall be permitted to serve both pedestrian street crossings.

R208 Detectable Warning Surfaces

R208.1 Where Required. Detectable warning surfaces complying with R305 shall be provided at the following locations on pedestrian access routes and at transit stops:

1. Curb ramps and blended transitions at pedestrian street crossings;
2. Pedestrian refuge islands;
3. Pedestrian at-grade rail crossings not located within a street or highway;
4. Boarding platforms at transit stops for buses and rail vehicles where the edges of the boarding platform are not protected by screens or guards; and
5. Boarding and alighting areas at sidewalk or street level transit stops for rail vehicles where the side of the boarding and alighting areas facing the rail vehicles is not protected by screens or guards.

Advisory R208.1 Where Required. On pedestrian access routes, detectable warning surfaces indicate the boundary between pedestrian and vehicular routes where there is a flush rather than a curbed connection. Detectable warning surfaces should not be provided at crossings of residential driveways since the pedestrian right-of-way continues across residential driveway aprons. However, where commercial driveways are provided with yield or stop control, detectable warning surfaces should be provided at the junction between the pedestrian route and the vehicular route. Where pedestrian at-grade rail crossings are located within a street or highway, detectable warning surfaces at the curb ramps or blended transitions make a second set of detectable warning surfaces at the rail crossing unnecessary.

Detectable warning surfaces are not intended to provide wayfinding for pedestrians who are blind or have low vision. Wayfinding can be made easier by:

- Sidewalks that provide a clear path free of street furniture;
- Visual contrast between walking and non-walking areas (*e.g.,* planted borders);
- Route edges that are clear and detectable by cane;
- Direct pedestrian street crossings and curb ramps that are in-line with direction of travel;
- Small corner radiuses that permit pedestrian street crossings to be as short and direct as possible;
- Orthogonal intersections that facilitate navigation using parallel and perpendicular vehicle sound cues; and
- Barriers where pedestrian travel or crossing is not permitted.

R208.2 Where Not Required. Detectable warning surfaces are not required at pedestrian refuge islands that are cut-through at street level and are less than 1.8 meters (6.0 ft) in length in the direction of pedestrian travel.

Advisory R208.2 Where Not Required. Detectable warning surfaces are not required at cut-through pedestrian refuge islands that are less than 1.8 meters (6.0 ft) in length because detectable warning surfaces must extend 610 millimeters (2.0 ft) minimum on each side of the island and be separated by 610 millimeters (2.0 ft) minimum length of island without detectable warning surfaces (see R305.1.4 and R305.2.4). Installing detectable warning surfaces at cut-through pedestrian islands that are less than 1.8 meters (6.0 ft) in length would compromise the effectiveness of detectable warning surfaces. Where a cut-through pedestrian refuge island is less than 1.8 m (6.0 ft) in length and the pedestrian street crossing is signalized, the signal should be timed for a complete crossing of the street.

R209 Accessible Pedestrian Signals and Pedestrian Pushbuttons

R209.1 General. Where pedestrian signals are provided at pedestrian street crossings, they shall include accessible pedestrian signals and pedestrian pushbuttons complying with sections 4E.08 through 4E.13 of the MUTCD (incorporated by reference, see R104.2). Operable parts shall comply with R406.

Advisory R209 Accessible Pedestrian Signals and Pedestrian Pushbuttons. An accessible pedestrian signal and pedestrian pushbutton is an integrated device that communicates information about the WALK and DON'T WALK intervals at signalized intersections in non-visual formats (*i.e.,* audible tones and vibrotactile surfaces) to pedestrians who are blind or have low vision.

R209.2 Alterations. Existing pedestrian signals shall comply with R209.1 when the signal controller and software are altered, or the signal head is replaced.

R210 Protruding Objects. Objects along or overhanging any portion of a pedestrian circulation path shall comply with R402 and shall not reduce the clear width required for pedestrian access routes.

Advisory R210 Protruding Objects. Protruding objects can be hazardous for pedestrians, especially pedestrians who are blind or have low vision. The requirements for protruding objects in R402 apply across the entire width of the pedestrian circulation path, not just the pedestrian access route. In addition, objects must not reduce the clear width required for pedestrian access routes. State and local governments must comply with the requirements for protruding objects and maintain the clear width of pedestrian access routes when installing or permitting the installation of street furniture on sidewalks, including street lights, utility poles and equipment cabinets, sign posts and signs, parking meters, trash receptacles, public telephones, mailboxes, newspaper vending machines, benches, transit shelters, kiosks, bicycle racks, planters and planted trees, and street sculptures. The American Association of State Highway and Transportation Officials (AASHTO) recommends that local governments use an encroachment permit process to regulate the use of sidewalks by private entities for activities such as outdoor dining, vending carts and stands, and street fairs in order to control protruding objects and maintain the clear width of pedestrian access routes. See AASHTO, Guide for the Planning, Design, and Operation of Pedestrian Facilities (2004), section 3.2.3.

R211 Signs

R211.1 General. Signs shall comply with R211. Where audible sign systems and other technologies are used to provide information equivalent to the information contained on pedestrian signs and transit signs, the signs are not required to comply with R211.2 and R211.3.

Advisory R211.1 General. Audible sign systems and other technologies that provide information equivalent to the information contained on signs are more usable by pedestrians who are blind or have low vision. Remote infrared audible signs that transmit information to portable devices that are carried by and audible only to the user are an example of audible sign systems and other technologies.

R211.2 Pedestrian Signs. Signs, other than transit signs, that provide directions, warnings, or other information for pedestrians only shall comply with R410.

Advisory R211.2 Pedestrian Signs. Pedestrian route signs along an historic trail, sidewalk closure and pedestrian detour signs, and tourist information signs are examples of signs that provide directions, warnings, or other information for pedestrians only. Signs provided for motorists and pedestrians such as highway and street name signs are not required to comply with R410.

R211.3 Transit Signs. Signs that identify the routes served by transit stops shall comply with R410.

Advisory R211.3 Transit Signs. Transit schedules, timetables, and maps are not required to comply with R410.

R211.4 Accessible Parking Space and Passenger Loading Zone Signs. Accessible parking spaces and accessible passenger loading zones shall be identified by signs displaying the International Symbol of Accessibility complying with R411. At accessible parallel parking spaces and accessible passenger loading zones, the signs shall be located at the head or foot of the parking space or passenger loading zone.

R212 Street Furniture

R212.1 General. Where provided, street furniture shall comply with the applicable requirements in R212.

R212.2 Drinking Fountains. Drinking fountains shall comply with sections 602.1 through 602.6 of Appendix D to 36 CFR part 1191.

R212.3 Public Toilet Facilities. Public toilet facilities shall comply with sections 206.2.4 and 603 of Appendix D to 36 CFR part 1191. At least one fixture of each type provided shall comply with sections 604 through 610 of Appendix D to 36 CFR part 1191. Where multiple single-user public toilet facilities are clustered at a single

location, at least 5 percent, but no less than one, of single-user toilets at each cluster shall comply with R212.3 and shall be identified by the International Symbol of Accessibility complying with R411.

R212.4 Tables. At least 5 percent, but no less than one, of tables at each location shall comply with section 902 of Appendix D to 36 CFR part 1191.

R212.5 Counters. Counters shall comply with section 904 of Appendix D to 36 CFR part 1191.

R212.6 Benches. At least 50 percent, but no less than one, of benches at each location shall provide clear space complying with R404 adjacent to the bench. The clear space shall be located either at one end of the bench or shall not overlap the area within 460 mm (1.5 ft) from the front edge of the bench. Benches at tables are not required to comply.

Advisory R212.6 Benches. Benches that provide full back support and armrests to assist in sitting and standing are more usable by pedestrians with disabilities.

R213 Transit Stops and Transit Shelters. Where provided, transit stops and transit shelters shall comply with R308.

Advisory R213 Transit Stops and Transit Shelters. Transit stops in the public right-of-way typically serve fixed route bus systems, including bus rapid transit systems, and light rail transit systems. Signs that identify the routes served by the transit stop must comply with the technical requirements for visual characters on signs unless audible sign systems or other technologies are used to provide the information (see R211 and R410). The Federal Highway Administration (FHWA) has issued guidance on the obligations of state transportation departments, metropolitan planning organizations, and transit agencies to coordinate the planning and funding of accessibility improvements to transit systems and facilities. The guidance is available at FHWA's Web site: *http://www.fhwa.dot.gov/civilrights/memos/ada_memo_clarificationa.htm.*

R214 On-Street Parking Spaces. Where on-street parking is provided on the block perimeter and the parking is marked or metered, accessible parking spaces complying with R309 shall be provided in accordance with Table R214. Where parking pay stations are provided and the parking is not marked, each 6.1 m (20.0 ft) of block perimeter where parking is permitted shall be counted as one parking space.

TABLE R214—ACCESSIBLE PARKING SPACES

Total number of marked or metered parking spaces on the block perimeter	Minimum required number of accessible parking spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 and over	4% of total

Advisory R214 On-Street Parking Spaces. The MUTCD contains provisions for marking on-street parking spaces (see section 3B.19). Metered parking includes parking metered by parking pay stations. Where parking on part of the block perimeter is altered, the minimum number of accessible parking spaces required is based on the total number of marked or metered parking spaces on the block perimeter.

R215 Passenger Loading Zones. Where passenger loading zones other than transit stops are provided, at least one accessible passenger loading zone complying with R310 shall be provided for each 30 m (100.0 ft) of continuous loading zone space or fraction thereof.

R216 Stairways and Escalators. Where provided on pedestrian circulation paths, stairways shall comply with R408 and escalators shall comply with section 810.9 of Appendix D to 36 CFR part 1191. Stairways and escalators shall not be part of a pedestrian access route.

R217 Handrails. Where provided on pedestrian circulation paths, handrails shall comply with R409.

R218 Doors, Doorways, and Gates. Where provided at pedestrian facilities, doors, doorways, and gates shall comply with section 404 of Appendix D to 36 CFR part 1191.

Advisory R218 Doors, Doorways, and Gates. Enclosed transit shelters are an example of pedestrian facilities where doors and doorways are provided.

CHAPTER R3: TECHNICAL REQUIREMENTS

R301 General

R301.1 Scope. The technical requirements in Chapter 3 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

R302 Pedestrian Access Routes

R302.1 General. Pedestrian access routes shall comply with R302.

R302.2 Components. Pedestrian access routes shall consist of one or more of the following components:

1. Sidewalks and other pedestrian circulation paths, or a portion of sidewalks and other pedestrian circulation paths, complying with R302.3 through R302.7;
2. Pedestrian street crossings and at-grade rail crossings complying with R302.3 through R302.7, and R306;
3. Pedestrian overpasses and underpasses and similar structures complying with R302.3 through R302.7;
4. Curb ramps and blended transitions complying with R302.7 and R304;
5. Ramps complying with R407;
6. Elevators and limited use/limited application elevators complying with sections 407 or 408 of Appendix D to 36 CFR part 1191;
7. Platform lifts complying with section 410 of Appendix D to 36 CFR part 1191; and
8. Doors, doorways, and gates complying with section 404 of Appendix D to 36 CFR part 1191.

Advisory R302.2 Components. The technical requirement for elevators, limited use/limited application elevators, platform lifts, and doors, doorways, and gates are contained in the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities and the Architectural Barriers Act Accessibility Guidelines (36 CFR part 1191).

R302.3 Continuous Width. Except as provided in R302.3.1, the continuous clear width of pedestrian access routes shall be 1.2 m (4.0 ft) minimum, exclusive of the width of the curb.

Advisory R302.3 Continuous Width. The continuous clear width requirements in R302.3 apply to sidewalks and other pedestrian circulation paths, pedestrian street crossings and at-grade rail crossings, and pedestrian overpasses and underpasses and similar structures (see R302.2). Clear width requirements are contained in R304.5.1 for curb ramps and blended transitions, and in R407.5 for ramps. Where sidewalks are wider than 1.2 m (4.0 ft), only a portion of the sidewalk is required to comply with the requirements in R302.3 through R302.7. Additional maneuvering space should be provided at turns or changes in direction, transit stops, recesses and alcoves, building entrances, and along curved or angled routes, particularly where the grade exceeds 5 percent. R210 prohibits street furniture and other objects from reducing the minimum clear width of pedestrian access routes.

R302.3.1 Medians and Pedestrian Refuge Islands. The clear width of pedestrian access routes within medians and pedestrian refuge islands shall be 1.5 m (5.0 ft) minimum.

R302.4 Passing Spaces. Where the clear width of pedestrian access routes is less than 1.5 m (5.0 ft), passing spaces shall be provided at intervals of 61 m (200.0 ft) maximum. Passing spaces shall be 1.5 m (5.0 ft) minimum by 1.5 m (5.0 ft) minimum. Passing spaces are permitted to overlap pedestrian access routes.

R302.5 Grade. Except as provided in R302.5.1, where pedestrian access routes are contained within a street or highway right-of-way, the grade of pedestrian access routes shall not exceed the general grade established for the adjacent street or highway. Where pedestrian access routes are not contained within a street or highway right-of-way, the grade of pedestrian access routes shall be 5 percent maximum.

Advisory R302.5 Grade. The grade requirements in R302.5 apply to sidewalks and other pedestrian circulation paths, pedestrian street crossings and at-grade rail crossings, and pedestrian overpasses and underpasses and similar structures (see R302.2). The grade of the pedestrian access route is measured parallel to the direction of pedestrian travel. Running slope requirements are contained in R304.2.2 for perpendicular curb ramps, in R304.3.2 for parallel curb ramps, in R304.4.1 for blended transitions, and in R407.2 for ramps.

R302.5.1 Pedestrian Street Crossings. Where pedestrian access routes are contained within pedestrian street crossings, the grade of the pedestrian access route shall be 5 percent maximum.

R302.6 Cross Slope. Except as provided in R302.6.1 and R302.6.2, the cross slope of pedestrian access routes shall be 2 percent maximum.

Advisory R302.6 Cross Slope. The cross slope requirements in R302.6 apply to sidewalks and other pedestrian circulation paths, pedestrian street crossings and at-grade rail crossings, and pedestrian overpasses and underpasses and similar structures (see R302.2). The cross slope of the pedestrian access route is measured perpendicular to the direction of pedestrian travel. Cross slope requirements are contained in R304.2.3 for perpendicular curb ramps, in R304.3.3 for parallel curb ramps, in R304.4.2 for blended transitions, and in R407.3 for ramps.

R302.6.1 Pedestrian Street Crossings Without Yield or Stop Control. Where pedestrian access routes are contained within pedestrian street crossings without yield or stop control, the cross slope of the pedestrian access route shall be 5 percent maximum.

Advisory R302.6.1 Pedestrian Street Crossings Without Yield or Stop Control. Pedestrian street crossings without yield or stop control are crossings where there is no yield or stop sign, or where there is a traffic signal that is designed for the green phase. At pedestrian street crossings without yield or stop control, vehicles can proceed through the intersection without slowing or stopping. Where pedestrian access routes are contained within pedestrian street crossings with yield or stop control, the cross slope of the pedestrian access route must be 2 percent maximum (see R302.6). At pedestrian street crossings with yield or stop control, vehicles slow or stop before proceeding through the intersection.

R302.6.2 Midblock Pedestrian Street Crossings. Where pedestrian access routes are contained within midblock pedestrian street crossings, the cross slope of the pedestrian access route shall be permitted to equal the street or highway grade.

R302.7 Surfaces. The surfaces of pedestrian access routes and elements and spaces required to comply with R302.7 that connect to pedestrian access routes shall be firm, stable, and slip resistant and shall comply with R302.7.

Advisory R302.7 Surfaces. The surface requirements in R302.7 apply to sidewalks and other pedestrian circulation paths, pedestrian street crossings and at-grade rail crossings, pedestrian overpasses and underpasses and similar structures, and curb ramps and blended transitions (see R302.2). The surface requirements in R302.7 also apply to surfaces at the following accessible elements and spaces that connect to pedestrian access routes:

- Clear spaces (see R404.2), including clear spaces at operable parts (see R403.2) such as accessible pedestrian signals and pedestrian pushbuttons (see R209), clear spaces at street furniture such as benches (see R212.6), and clear spaces within transit shelters (see R308.2);
- Boarding and alighting areas and boarding platforms at transit stops (see R308.1.3.1);
- Access aisles at accessible parking spaces (see R309.2.1 and R309.3) and accessible passenger loading zones (see R310.3.4); and
- Ramp runs and landings (see R407.7).

R302.7.1 Vertical Alignment. Vertical alignment shall be generally planar within pedestrian access routes (including curb ramp runs, blended transitions, turning spaces, and gutter areas within pedestrian access routes) and surfaces at other elements and spaces required to comply with R302.7 that connect to pedestrian access routes. Grade breaks shall be flush. Where pedestrian access routes cross rails at grade, the pedestrian access route surface shall be level and flush with the top of rail at the outer edges of the rails, and the surface between the rails shall be aligned with the top of rail.

Advisory R302.7.1 Vertical Alignment. Pedestrian access route surfaces must be generally planar and smooth. Surfaces should be chosen for easy rollability. Surfaces that are heavily textured, rough, or chamfered and paving systems consisting of individual units that cannot be laid in plane will greatly increase rolling resistance and subject pedestrians who use wheelchairs, scooters, and rolling walkers to the stressful and often painful effects of vibration. Such materials should be reserved for borders and decorative accents located outside of or only occasionally crossing the pedestrian access route. Surfaces should be designed, constructed, and maintained according to appropriate industry standards, specifications, and recommendations for best practice.

R302.7.2 Vertical Surface Discontinuities. Vertical surface discontinuities shall be 13 mm (0.5 in) maximum. Vertical surface discontinuities between 6.4 mm (0.25 in) and 13 mm (0.5 in) shall be beveled with a slope not steeper than 50 percent. The bevel shall be applied across the entire vertical surface discontinuity.

Advisory R302.7.2 Vertical Surface Discontinuities. The allowance for vertical surface discontinuities is for occasional expansion joints and objects such as utility covers, vault frames, and gratings that cannot be located in another portion of the sidewalk outside the pedestrian access route. However, objects such as utility covers, vault frames, and gratings should not be located on curb ramp runs, blended transitions, turning spaces, or gutter areas within the pedestrian access route. This may not always be possible in alterations, but should be avoided wherever possible. Vertical surface discontinuities between unit pavers should be minimized.

R302.7.3 Horizontal Openings. Horizontal openings in gratings and joints shall not permit passage of a sphere more than 13 mm (0.5 in) in diameter. Elongated openings in gratings shall be placed so that the long dimension is perpendicular to the dominant direction of travel.

Advisory R302.7.4 Flangeway Gaps. Flangeway gaps at pedestrian at-grade rail crossings shall be 64 mm (2.5 in) maximum on non-freight rail track and 75 mm (3 in) maximum on freight rail track.

R302.7.4 Flangeway Gaps. Flangeway gaps are necessary to allow the passage of train wheel flanges. Flangeway gaps pose a potential hazard to pedestrians who use wheelchairs because the gaps can entrap the wheelchair casters.

R303 Alternate Pedestrian Access Routes (See R205)

R304 Curb Ramps and Blended Transitions

R304.1 General. Curb ramps and blended transitions shall comply with R304.

Advisory R304.1 General. There are two types of curb ramps:

- Perpendicular curb ramps have a running slope that cuts through or is built up to the curb at right angles or meets the gutter break at right angles where the curb is curved. On large corner radiuses, it will be necessary to indent the gutter break on one side of the curb ramp in order for the curb ramp to meet the gutter break at right angles.
- Parallel curb ramps have a running slope that is in-line with the direction of sidewalk travel and lower the sidewalk to a level turning space where a turn is made to enter the pedestrian street crossing.

Perpendicular curb ramps can be provided where the sidewalk is at least 3.7 m (12.0 ft) wide. Parallel curb ramps can be provided where the sidewalk is at least 1.2 m (4.0 ft) wide. Parallel and perpendicular curb ramps can be combined. A parallel curb ramp is used to lower the sidewalk to a mid-landing and a short perpendicular curb ramp connects the landing to the street. Combination curb ramps can be provided where the sidewalk is at least 1.8 m (6.0 ft) wide.

Blended transitions are raised pedestrian street crossings, depressed corners, or similar connections between pedestrian access routes at the level of the sidewalk and the level of the pedestrian street crossing that have a grade of 5 percent or less. Blended transitions are suitable for a range of sidewalk conditions.

R304.2 Perpendicular Curb Ramps. Perpendicular curb ramps shall comply with R304.2 and R304.5.

R304.2.1 Turning Space. A turning space 1.2 m (4.0 ft) minimum by 1.2 m (4.0 ft) minimum shall be provided at the top of the curb ramp and shall be permitted to overlap other turning spaces and clear spaces. Where the turning space is constrained at the back-of-sidewalk, the turning space shall be 1.2 m (4.0 ft) minimum by 1.5 m (5.0 ft) minimum. The 1.5 m (5.0 ft) dimension shall be provided in the direction of the ramp run.

R304.2.2 Running Slope. The running slope of the curb ramp shall cut through or shall be built up to the curb at right angles or shall meet the gutter grade break at right angles where the curb is curved. The running slope of the curb ramp shall be 5 percent minimum and 8.3 percent maximum but shall not require the ramp length to exceed 4.5 m (15.0 ft). The running slope of the turning space shall be 2 percent maximum.

R304.2.3 Flared Sides. Where a pedestrian circulation path crosses the curb ramp, flared sides shall be sloped 10 percent maximum, measured parallel to the curb line.

Advisory R304.2.3 Flared Sides. The flared sides are part of the pedestrian circulation path, but are not part of the pedestrian access route. Curb ramps whose sides have returned curbs provide useful directional cues where they are aligned with the pedestrian street crossing and are protected from cross travel by landscaping, street furniture, chains, fencing, or railings.

R304.3 Parallel Curb Ramps. Parallel curb ramps shall comply with R304.3 and R304.5.

R304.3.1 Turning Space. A turning space 1.2 m (4.0 ft) minimum by 1.2 m (4.0 ft) minimum shall be provided at the bottom of the curb ramp and shall be permitted to overlap other turning spaces and clear spaces. If the turning space is constrained on 2 or more sides, the turning space shall be 1.2 m (4.0 ft) minimum by 1.5 m (5.0 ft). The 1.5 m (5.0 ft) dimension shall be provided in the direction of the pedestrian street crossing.

R304.3.2 Running Slope. The running slope of the curb ramp shall be in-line with the direction of sidewalk travel. The running slope of the curb ramp shall be 5 percent minimum and 8.3 percent maximum but shall not require the ramp length to exceed 4.5 m (15.0 ft) minimum. The running slope of the turning space shall be 2 percent maximum.

R304.4 Blended Transitions. Blended transitions shall comply with R304.4 and R304.5.

R304.4.1 Running Slope. The running slope of blended transitions shall be 5 percent maximum.

R304.5 Common Requirements. Curb ramps and blended transitions shall comply with R304.5.

R304.5.1 Width. The clear width of curb ramp runs (excluding any flared sides), blended transitions, and turning spaces shall be 1.2 m (4.0 ft) minimum.

R304.5.2 Grade Breaks. Grade breaks at the top and bottom of curb ramp runs shall be perpendicular to the direction of the ramp run. Grade breaks shall not be permitted on the surface of ramp runs and turning spaces. Surface slopes that meet at grade breaks shall be flush.

R304.5.3 Cross Slope. The cross slope of curb ramps, blended transitions, and turning spaces shall be 2 percent maximum. At pedestrian street crossings without yield or stop control and at midblock pedestrian street crossings, the cross slope shall be permitted to equal the street or highway grade.

Advisory R304.5.3 Cross Slope. Pedestrian street crossings without yield or stop control are crossings where there is no yield or stop sign, or where there is a traffic signal that is designed for the green phase. At pedestrian street crossings without yield or stop control, vehicles can proceed through the intersection without slowing or stopping.

R304.5.4 Counter Slope. The counter slope of the gutter or street at the foot of curb ramp runs, blended transitions, and turning spaces shall be 5 percent maximum.

R304.5.5 Clear Space. Beyond the bottom grade break, a clear space 1.2 m (4.0 ft) minimum by 1.2 m (4.0 ft) minimum shall be provided within the width of the pedestrian street crossing and wholly outside the parallel vehicle travel lane.

R305 Detectable Warning Surfaces

R305.1 General. Detectable warning surfaces shall consist of truncated domes aligned in a square or radial grid pattern and shall comply with R305.

Advisory R305.1 Dome Size. Where the truncated domes are arrayed radially, they may differ in diameter and center-to-center spacing within the ranges specified in R305.1.1 and R305.1.2.

R305.1.1 Dome Size. The truncated domes shall have a base diameter of 23 mm (0.9 in) minimum and 36 mm (1.4 in) maximum, a top diameter of 50 percent of the base diameter minimum and 65 percent of the base diameter maximum, and a height of 5 mm (0.2 in).

R305.1.2 Dome Spacing. The truncated domes shall have a center-to-center spacing of 41 mm (1.6 in) minimum and 61 mm (2.4 in) maximum, and a base-to-base spacing of 17 mm (0.65 in) minimum, measured between the most adjacent domes.

R305.1.3 Contrast. Detectable warning surfaces shall contrast visually with adjacent gutter, street or highway, or pedestrian access route surface, either light-on-dark or dark-on-light.

Advisory R305.1.3 Contrast. Visual contrast may be provided on the full surface of the curb ramp but should not extend to flared sides. Visual contrast also helps pedestrians who use wheelchairs to locate the curb ramp from the other side of the street.

R305.1.4 Size. Detectable warning surfaces shall extend 610 mm (2.0 ft) minimum in the direction of pedestrian travel. At curb ramps and blended transitions, detectable warning surfaces shall extend the full width of the ramp run (excluding any flared sides), blended transition, or turning space. At pedestrian at-grade rail crossings not located within a street or highway, detectable warnings shall extend the full width of the crossing. At boarding platforms for buses and rail vehicles, detectable warning surfaces shall extend the full length of the public use areas of the platform. At boarding and alighting areas at sidewalk or street level transit stops for rail vehicles, detectable warning surfaces shall extend the full length of the transit stop.

R305.2 Placement. The placement of detectable warning surfaces shall comply with R305.2.

Advisory R305.2 Placement. Some detectable warning products require a concrete border for proper installation. The concrete border should not exceed 51 mm (2 in). Where the back of curb edge is tooled to provide a radius, the border dimension should be measured from the end of the radius.

R305.2.1 Perpendicular Curb Ramps. On perpendicular curb ramps, detectable warning surfaces shall be placed as follows:

1. Where the ends of the bottom grade break are in front of the back of curb, detectable warning surfaces shall be placed at the back of curb.

2. Where the ends of the bottom grade break are behind the back of curb and the distance from either end of the bottom grade brake to the back of curb is 1.5 m (5.0 ft) or less, detectable warning surfaces shall be placed on the ramp run within one dome spacing of the bottom grade break.

3. Where the ends of the bottom grade break are behind the back of curb and the distance from either end of the bottom grade brake to the back of curb is more than 1.5 m (5.0 ft), detectable warning surfaces shall be placed on the lower landing at the back of curb.

Advisory R305.2.1 Perpendicular Curb Ramps. Detectable warning surfaces are intended to provide a tactile equivalent underfoot of the visible curb line. If detectable warning surfaces are placed too far from the curb line because of a large curb radius, the location may compromise effective crossing. Detectable warning surfaces should not be placed on paving or expansion joints. The rows of truncated domes in detectable warning surfaces should be aligned perpendicular to the grade break between the ramp run and the street so pedestrians who use wheelchairs can ''track'' between the domes. Where detectable warning surfaces are provided on a surface with a slope that is less than 5 percent, dome orientation is less critical.

R305.2.2 Parallel Curb Ramps. On parallel curb ramps, detectable warning surfaces shall be placed on the turning space at the flush transition between the street and sidewalk.

R305.2.3 Blended Transitions. On blended transitions, detectable warning surfaces shall be placed at the back of curb. Where raised pedestrian street crossings, depressed corners, or other level pedestrian street crossings are provided, detectable warning surfaces shall be placed at the flush transition between the street and the sidewalk.

R305.2.4 Pedestrian Refuge Islands. At cut-through pedestrian refuge islands, detectable warning surfaces shall be placed at the edges of the pedestrian island and shall be separated by a 610 mm (2.0 ft) minimum length of surface without detectable warnings.

Advisory R305.2.4 Pedestrian Refuge Islands. The edges of cut-through pedestrian refuge islands can provide useful cues to the direction of the crossing.

R305.2.5 Pedestrian At-Grade Rail Crossings. At pedestrian at-grade rail crossings not located within a street or highway, detectable warning surfaces shall be placed on each side of the rail crossing. The edge of the detectable warning surface nearest the rail crossing shall be 1.8 m (6.0 ft) minimum and 4.6 m (15.0 ft) maximum from the centerline of the nearest rail. Where pedestrian gates are provided, detectable warning surfaces shall be placed on the side of the gates opposite the rail.

R305.2.6 Boarding Platforms. At boarding platforms for buses and rail vehicles, detectable warning surfaces shall be placed at the boarding edge of the platform.

R305.2.7 Boarding and Alighting Areas. At boarding and alighting areas at sidewalk or street level transit stops for rail vehicles, detectable warning surfaces shall be placed at the side of the boarding and alighting area facing the rail vehicles.

R306 Pedestrian Street Crossings

R306.1 General. Pedestrian street crossings shall comply with R306.

R306.2 Pedestrian Signal Phase Timing. All pedestrian signal phase timing shall comply with section 4E.06 of the MUTCD (incorporated by reference, see R104.2.4) and shall be based on a pedestrian clearance time

that is calculated using a pedestrian walking speed of 1.1 m/s (3.5 ft/s) or less.

R306.3 Roundabouts. Where pedestrian facilities are provided at roundabouts, they shall comply with R306.3.

Advisory R306.3 Roundabouts. Pedestrian street crossings at roundabouts can be difficult for pedestrians who are blind or have low vision to identify because the crossings are located off to the side of the pedestrian circulation path around the street or highway. The continuous traffic flow at roundabouts removes many of the audible cues that pedestrians who are blind use to navigate pedestrian street crossings. Water fountains and other features that produce background noise should not be placed in the middle island of a roundabout because pedestrians who are blind use auditory cues to help detect gaps in traffic. Multi-lane pedestrian street crossings at roundabouts involve an increased risk of pedestrian exposure to accident.

R306.3.1 Separation. Where sidewalks are flush against the curb and pedestrian street crossing is not intended, a continuous and detectable edge treatment shall be provided along the street side of the sidewalk. Detectable warning surfaces shall not be used for edge treatment. Where chains, fencing, or railings are used for edge treatment, they shall have a bottom edge 380 mm (15 in) maximum above the sidewalk.

Advisory R306.3.1 Separation. Carefully delineated pedestrian street crossing approaches with plantings or other defined edges provide effective non-visual cues for identifying pedestrian street crossings at roundabouts. European and Australian roundabouts provide a 610 mm (24 inch) width of tactile surface treatment from the centerline of the curb ramp or blended transition across the full width of the sidewalk to provide an underfoot cue for identifying pedestrian street crossings. Detectable warning surfaces should not be used to guide pedestrians who are blind or have low vision to pedestrian street crossings because detectable warning surfaces indicate the flush transition between the sidewalk and the street or highway. Schemes that remove cyclists from the street or highway by means of a ramp that angles from the curb lane to the sidewalk and then provide re-entry by means of a similar ramp beyond pedestrian street crossings can provide false cues to pedestrians who are using the edge of the sidewalk for wayfinding about the location of pedestrian street crossings.

R306.3.2 Pedestrian Activated Signals. At roundabouts with multi-lane pedestrian street crossings, a pedestrian activated signal complying with R209 shall be provided for each multi-lane segment of each pedestrian street crossing, including the splitter island. Signals shall clearly identify which pedestrian street crossing segment the signal serves.

Advisory R306.3.2 Pedestrian Activated Signals. Roundabouts with single-lane approach and exit legs are not required to provide pedestrian activated signals. Pedestrian activated signals must comply with the requirements for accessible pedestrian signals and pedestrian pushbuttons (see R209). Pedestrian activated signals installed at splitter islands should be carefully located and separated so that signal spillover does not give conflicting information about which pedestrian street crossing has the WALK indication displayed. Pedestrian Hybrid Beacons can be used at roundabouts (see MUTCD sections 4F.01 through 4F.03). Pedestrian Hybrid Beacons are traffic signals that consist of a yellow signal centered below two horizontally aligned red signals. The signals are normally not illuminated. The signals are initiated only upon pedestrian activation and can be timed to minimize the interruption of traffic. The signals cease operation after the pedestrian clears the crosswalk. When activated by a pedestrian, the following signals are displayed to drivers: a flashing yellow signal, then a steady yellow signal, then two steady red signals during the pedestrian walk interval, and then alternating flashing red signals during the pedestrian clearance interval. The following signals are displayed to pedestrians: a steady upraised hand (symbolizing DON'T WALK) when the flashing or steady yellow signal is operating, then a walking person (symbolizing WALK) when the steady red signals are operating, and then a flashing upraised hand (symbolizing DON'T WALK) when the alternating flashing red signals are operating.

R306.4 Channelized Turn Lanes at Roundabouts. At roundabouts with pedestrian street crossings, pedestrian activated signals complying with R209 shall be provided at pedestrian street crossings at multi-lane channelized turn lanes.

R306.5 Channelized Turn Lanes at Other Signalized Intersections. At signalized intersections other than roundabouts with pedestrian street crossings, pedestrian activated signals complying with R209 shall be provided at pedestrian street crossings at multi-lane channelized turn lanes.

R307 Accessible Pedestrian Signals and Pedestrian Pushbuttons (See R209)

R308 Transit Stops and Transit Shelters

R308.1 Transit Stops. Transit stops shall comply with R308.1.

Advisory R308.1 Transit Stops. Transit stops should be located so that there is a level and stable surface for boarding vehicles. Locating transit stops at signalized intersections increases the usability for pedestrian with disabilities. Where security bollards are installed at transit stops, they must not obstruct the clear space at boarding and alighting areas or reduce the required clear width at pedestrian access routes (see R210).

R308.1.1 Boarding and Alighting Areas. Boarding and alighting areas at sidewalk or street level transit stops shall comply with R308.1.1 and R308.1.3. Where transit stops serve vehicles with more than one car, boarding and alighting areas serving each car shall comply with R308.1.1 and R308.1.3.

Advisory R308.1.1 Boarding and Alighting Areas. Where a transit shelter is provided, the boarding and alighting area can be located either within or outside of the shelter.

R308.1.1.1 Dimensions. Boarding and alighting areas shall provide a clear length of 2.4 m (8.0 ft) minimum, measured perpendicular to the curb or street or highway edge, and a clear width of 1.5 m (5.0 ft) minimum, measured parallel to the street or highway.

R308.1.1.2 Grade. Parallel to the street or highway, the grade of boarding and alighting areas shall be the same as the street or highway, to the extent practicable. Perpendicular to the street or highway, the grade of boarding and alighting areas shall not be steeper than 2 percent.

R308.1.2 Boarding Platforms. Boarding platforms at transit stops shall comply with R308.1.2 and R308.1.3.

R308.1.2.1 Platform and Vehicle Floor Coordination. Boarding platforms shall be positioned to coordinate with vehicles in accordance with the applicable requirements in 49 CFR parts 37 and 38.

Advisory R308.1.2.1 Platform and Vehicle Floor Coordination. The Department of Transportation regulations (49 CFR parts 37 and 38) require the height of the vehicle floor and the station platform to be coordinated so as to minimize the vertical and horizontal gaps.

R308.1.2.2 Slope. Boarding platforms shall not exceed a slope of 2 percent in any direction. Where boarding platforms serve vehicles operating on existing track or existing street or highway, the slope of the platform parallel to the track or the street or highway is permitted to be equal to the grade of the track or street or highway.

R308.1.3 Common Requirements. Boarding and alighting areas and boarding platforms shall comply with R308.1.3.

R308.1.3.1 Surfaces. The surfaces of boarding and alighting areas and boarding platforms shall comply with R302.7.

Advisory R308.1.3.1 Surfaces. Detectable warning surfaces are required at boarding and alighting areas for rail vehicles and at boarding platforms for buses and rail vehicles (see R208).

R308.1.3.2 Connection. Boarding and alighting areas and boarding platforms shall be connected to streets, sidewalks, or pedestrian circulation paths by pedestrian access routes complying with R302.

R308.2 Transit Shelters. Transit shelters shall be connected by pedestrian access routes complying with R302 to boarding and alighting areas or boarding platforms complying with R308.1. Transit shelters shall provide a minimum clear space complying with R404 entirely within the shelter. Where seating is provided within transit shelters, the clear space shall be located either at one end of a seat or shall not overlap the area within 460 mm (1.5 ft) from the front edge of the seat. Environmental controls within transit shelters shall be proximity-actuated. Protruding objects within transit shelters shall comply with R402.

Advisory R308.2 Transit Shelters. The clear space must be located entirely within the transit shelter and not interfere with other persons using the seating.

R309 On-Street Parking Spaces

R309.1 General. On-street parking spaces shall comply with R309.

Advisory R309.1 General. R214 specifies how many accessible parking spaces must be provided on the block perimeter where on-

street parking is marked or metered. Accessible parking spaces must be identified by signs displaying the International Symbol of Accessibility (see R211.3 and R411). Accessible parking spaces should be located where the street has the least crown and grade and close to key destinations.

R309.2 Parallel Parking Spaces. Parallel parking spaces shall comply with R309.2.

Advisory R309.2 Parallel Parking Spaces. The sidewalk adjacent to accessible parallel parking spaces should be free of signs, street furniture, and other obstructions to permit deployment of a van side-lift or ramp or the vehicle occupant to transfer to a wheelchair or scooter. Accessible parallel parking spaces located at the end of the block face are usable by vans that have rear lifts and cars that have scooter platforms.

R309.2.1 Wide Sidewalks. Where the width of the adjacent sidewalk or available right-of-way exceeds 4.3 m (14.0 ft), an access aisle 1.5 m (5.0 ft) wide minimum shall be provided at street level the full length of the parking space and shall connect to a pedestrian access route. The access aisle shall comply with R302.7 and shall not encroach on the vehicular travel lane.

Advisory R309.2.1 Wide Sidewalks. Vehicles may park at the curb or at the parking lane boundary and use the space required by R309.2.1 on either the driver or passenger side of the vehicle to serve as the access aisle.

R309.2.1.1 Alterations. In alterations where the street or sidewalk adjacent to the parking spaces is not altered, an access aisle shall not be required provided the parking spaces are located at the end of the block face.

R309.2.2 Narrow Sidewalks. An access aisle is not required where the width of the adjacent sidewalk or the available right-of-way is less than or equal to 4.3 m (14.0 ft). When an access aisle is not provided, the parking spaces shall be located at the end of the block face.

Advisory R309.2.2 Narrow Sidewalks. Vehicle lifts or ramps can be deployed on a 2.4 m (8.0 ft) sidewalk if there are no obstructions.

R309.3 *Perpendicular or Angled Parking Spaces.* Where perpendicular or angled parking is provided, an access aisle 2.4 m (8.0 ft) wide minimum shall be provided at street level the full length of the parking space and shall connect to a pedestrian access route. The access aisle shall comply with R302.7 and shall be marked so as to discourage parking in the access aisle. Two parking spaces are permitted to share a common access aisle.

Advisory R309.3 Perpendicular or Angled Parking Spaces. Perpendicular and angled parking spaces permit the deployment of a van side-lift or ramp.

R309.4 Curb Ramps or Blended Transitions. Curb ramps or blended transitions complying with R304 shall connect the access aisle to the pedestrian access route. Curb ramps shall not be located within the access aisle.

Advisory R309.4 Curb Ramps or Blended Transitions. At parallel parking spaces, curb ramps and blended transitions should be located so that a van side-lift or ramp can be deployed to the sidewalk and the vehicle occupant can transfer to a wheelchair or scooter. Parking spaces at the end of the block face can be served by curb ramps or blended transitions at the pedestrian street crossing. Detectable warning surfaces are not required on curb ramps and blended transitions that connect the access aisle to the sidewalk, including where the sidewalk is at the same level as the parking spaces, unless the curb ramps and blended transitions also serve pedestrian street crossings (see R208).

R309.5 Parking Meters and Parking Pay Stations. Parking meters and parking pay stations that serve accessible parking spaces shall comply with R309.5. Operable parts shall comply with R403.

R309.5.1 Location. At accessible parallel parking spaces, parking meters shall be located at the head or foot of the parking space.

Advisory R309.5.1 Location. Locating parking meters at the head or foot of the parking space permits deployment of a van side-lift or ramp or the vehicle occupant to transfer to a wheelchair or scooter.

R309.5.2 Displays and Information. Displays and information shall be visible from a point located 1.0 m (3.3 ft) maximum above the center of the clear space in front of the parking meter or parking pay station.

R310 Passenger Loading Zones

R310.1 General. Passenger loading zones shall comply with R310.

Advisory R310.1 General. Accessible passenger loading zones must be identified by signs displaying the International Symbol of Accessibility (see R211.3 and R411).

R310.2 Vehicle Pull-Up Space. Passenger loading zones shall provide a vehicular pull-up space 2.4 m (8.0 ft) wide minimum and 6.1 m (20.0 ft) long minimum.

R310.3 Access Aisle. Passenger loading zones shall provide access aisles complying with R310.3 adjacent to the vehicle pull-up space. Access aisles shall be at the same level as the vehicle pull-up space they serve and shall not overlap the vehicular travel lane. Curb ramps or blended transitions complying with R304 shall connect the access aisle to the pedestrian access route. Curb ramps are not permitted within the access aisle.

R310.3.1 Width. Access aisles serving vehicle pull-up spaces shall be 1.5 m (5.0 ft) wide minimum.

R310.3.2 Length. Access aisles shall extend the full length of the vehicle pull-up spaces they serve.

R310.3.3 Marking. Access aisles shall be marked so as to discourage parking in them.

R310.3.4 Surfaces. Access aisle surfaces shall comply with R302.7.

CHAPTER R4: SUPPLEMENTARY TECHNICAL REQUIREMENTS

R401 General

R401.1 Scope. The supplemental technical requirements in Chapter 4 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

R402 Protruding Objects

R402.1 General. Protruding objects shall comply with R402.

R402.2 Protrusion Limits. Objects with leading edges more than 685 mm (2.25 ft) and not more than 2 m (6.7 ft) above the finish surface shall protrude 100 mm (4 in) maximum horizontally into pedestrian circulation paths.

R402.3 Post-Mounted Objects. Where objects are mounted on free-standing posts or pylons and the objects are 685 mm (2.25 ft) minimum and 2030 mm (6.7 ft) maximum above the finish surface, the objects shall overhang pedestrian circulation paths 100 mm (4 in) maximum measured horizontally from the post or pylon base. The base dimension shall be 64 mm (2.5 in) thick minimum. Where objects are mounted between posts or pylons and the clear distance between the posts or pylons is greater than 305 mm (1.0 ft), the lowest edge of the object shall be 685 mm (2.25 ft) maximum or 2 m (6.7 ft) minimum above the finish surface.

R402.4 Reduced Vertical Clearance. Guardrails or other barriers to pedestrian travel shall be provided where the vertical clearance is less than 2 m (6.7 ft) high. The leading edge of the guardrail or barrier shall be located 685 mm (2.25 ft) maximum above the finish surface.

R403 Operable Parts

R403.1 General. Operable parts shall comply with R403.

Advisory R403.1 General. Operable parts on accessible pedestrian signals and pedestrian pushbuttons (see R209) and parking meters and parking pay stations that serve accessible parking spaces (see R309.6) must comply with R403.

R403.2 Clear Space. A clear space complying with R404 shall be provided at operable parts.

R403.3 Height. Operable parts shall be placed within one or more of the reach ranges specified in R405.

R403.4 Operation. Operable parts shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate operable parts shall be 22 N (5 lbs) maximum.

R404 Clear Spaces

R404.1 General. Clear spaces shall comply with R404.

Advisory R404.1 General. Clear spaces are required at operable parts (see R403.2), including accessible pedestrian signals and pedestrian pushbuttons (see R209) and parking meters and parking pay stations that serve accessible parking spaces (see R309.6). Clear spaces are also required at benches (see R212.6) and within transit shelters (see R308.2).

R404.2 Surfaces. Surfaces of clear spaces shall comply with R302.7 and shall have a running slope consistent with the grade of the adjacent pedestrian access route and cross slope of 2 percent maximum.

R404.3 Size. Clear spaces shall be 760 mm (2.5 ft) minimum by 1220 mm (4.0 ft) minimum.

R404.4 Knee and Toe Clearance. Unless otherwise specified, clear spaces shall be permitted to include knee and toe clearance complying with R405.

R404.5 Position. Unless otherwise specified, clear spaces shall be positioned for

either forward or parallel approach to an element.

R404.6 Approach. One full unobstructed side of a clear space shall adjoin a pedestrian access route or adjoin another clear space.

R404.7 Maneuvering Space. Where a clear space is confined on all or part of three sides, additional maneuvering space shall be provided in accordance with R404.7.1 and R404.7.2.

R404.7.1 Forward Approach. The clear space and additional maneuvering space shall be 915 mm (3.0 ft) wide minimum where the depth exceeds 610 mm (2.0 ft).

R404.7.2 Parallel Approach. The clear space and additional maneuvering space shall be 1525 mm (5.0 ft) wide minimum where the depth exceeds 380 mm (1.25 ft).

R405 Knee and Toe Clearance

R405.1 General. Where space beneath an element is included as part of a clear space, the space shall comply with R405. Additional space shall not be prohibited beneath an element but shall not be considered as part of the clear space.

Advisory R405.1 General. Clearances are measured in relation to the usable clear space, not necessarily to the vertical support for an element. When determining clearance under an object, care should be taken to ensure that the space is clear of any obstructions.

R405.2 Toe Clearance

R405.2.1 General. Space under an element between the finish surface and 230 mm (9 in) above the finish surface shall be considered toe clearance and shall comply with R404.2.

R405.2.2 Maximum Depth. Toe clearance shall extend 635 mm (2.1 ft) maximum under an element.

R405.2.3 Minimum Required Depth. Where toe clearance is required at an element as part of a clear space, the toe clearance shall extend 430 mm (1.4 ft) minimum under the element.

R405.2.4 Width. Toe clearance shall be 760 mm (2.5 ft) wide minimum.

R405.3 Knee Clearance

R405.3.1 General. Space under an element between 230 mm (9 in) and 685 mm (2.25 ft) above the finish surface shall be considered knee clearance and shall comply with R405.3.

R405.3.2 Maximum Depth. Knee clearance shall extend 635 mm (2.1 ft) maximum under an element at 230 mm (9 in) above the finish surface.

R405.3.3 Minimum Required Depth. Where knee clearance is required under an element as part of a clear space, the knee clearance shall be 280 mm (11 in) deep minimum at 230 mm (9 in) above the finish surface, and 205 mm (8 in) deep minimum at 685 mm (2.25 ft) above the finish surface.

R405.3.4 Clearance Reduction. Between 230 mm (9 in) and 685 mm (2.25 ft) above the finish surface, the knee clearance shall be permitted to reduce at a rate of 25 mm (1 in) in depth for each 150 mm (6 in) in height.

R405.3.5 Width. Knee clearance shall be 760 mm (2.5 ft) wide minimum.

R406 Reach Ranges

R406.1 General. Reach ranges shall comply with R406.

R406.2 Unobstructed Forward Reach. Where a forward reach is unobstructed, the high forward reach shall be 1220 mm (4.0 ft) maximum and the low forward reach shall be 380 mm (1.25 ft) minimum above the finish surface. Forward reach over an obstruction is not permitted.

R406.3 Unobstructed Side Reach. Where a clear space allows a parallel approach to an element and the side reach is unobstructed, the high side reach shall be 1220 mm (4.0 ft) maximum and the low side reach shall be 380 mm (1.25 ft) minimum above the finish surface. An obstruction shall be permitted between the clear space and the element where the depth of the obstruction is 255 mm (10 in) maximum.

R407 Ramps

R407.1 General. Ramps shall comply with R407.

R407.2 Running Slope. Ramp runs shall have a running slope between 5 percent minimum and 8.3 percent maximum.

Advisory R407.2 Running Slope. Ramps with the least possible running slope accommodate the widest range of users. Providing stairways along with ramps, where possible, benefits pedestrians with heart disease, limited stamina, and others for whom distance presents a greater barrier than steps.

R407.3 Cross Slope. The cross slope of ramp runs shall be 2 percent maximum.

R407.4 Width. The clear width of a ramp run and, where handrails are provided, the clear width between handrails shall be 915 mm (3.0 ft) minimum.

R407.5 Rise. The rise for any ramp run shall be 760 mm (2.5 ft) maximum.

R407.6 Landings. Ramps shall have landings at the top and the bottom of each ramp run. Landings shall comply with R407.7.

R407.6.1 Slope. Landing slopes shall be 2 percent maximum in any direction.

R407.6.2 Width. The landing clear width shall be at least as wide as the widest ramp run leading to the landing.

R407.6.3 Length. The landing clear length shall be 1.5 m (5.0 ft) long minimum.

R407.6.4 Change in Direction. Ramps that change direction between runs at landings shall have a clear landing 1.5 m (5.0 ft) minimum by 1.5 m (5.0 ft) minimum.

R407.7 Surfaces. Surfaces of ramp runs and landings shall comply with R302.7.

R407.8 Handrails. Ramp runs with a rise greater than 150 mm (6 in) shall have handrails complying with R409.

R407.9 Edge Protection. Edge protection complying with R407.9.1 or R407.9.2 shall be provided on each side of ramp runs and ramp landings.

R407.9.1 Extended Ramp Surface. The surface of the ramp run or landing shall extend 305 mm (1.0 ft) minimum beyond the inside face of a handrail complying with R409.

Advisory R407.9.1 Extended Ramp Surface. The extended surface prevents wheelchair casters and crutch tips from slipping off the ramp surface.

R407.9.2 Curb or Barrier. A curb or barrier shall be provided that prevents the passage of a 100 mm (4 in) diameter sphere, where any portion of the sphere is within 100 mm (4 in) of the finish surface.

R408 Stairways

R408.1 General. Stairways shall comply with R408.

R408.2 Treads and Risers. All steps on a flight of stairs shall have uniform riser heights and uniform tread depths. Risers shall be 100 mm (4 in) high minimum and 180 mm (7 in) high maximum. Treads shall be 280 mm (11 in) deep minimum.

R408.3 Open Risers. Open risers are not permitted.

R408.4 Tread Surface. Stairway treads shall comply with R302.7. Changes in level are not permitted.

R408.5 Nosings. The radius of curvature at the leading edge of the tread shall be 13 mm (0.5 inch) maximum. Nosings that project beyond risers shall have the underside of the leading edge curved or beveled. Risers shall be permitted to slope under the tread at an angle of 30 degrees maximum from vertical. The permitted projection of the nosing shall extend 38 mm (1.5 in) maximum over the tread below.

R408.6 Handrails. Stairways shall have handrails complying with R409.

R409 Handrails

R409.1 General. Handrails required at ramps and stairways, and handrails provided on pedestrian circulation paths shall comply with R409.

Advisory R409.1 General. Handrails are required on ramp runs with a rise greater than 150 mm (6 in) (see R407.8) and stairways (see R408.6). Handrails are not required on pedestrian circulation paths. However, if handrails are provided on pedestrian circulation paths, the handrails must comply with R409 (see R216). The requirements in R409.2, R409.3, and R409.10 apply only to handrails at ramps and stairways, and do not apply to handrails provided on pedestrian circulation paths.

R409.2 Where Required. Handrails shall be provided on both sides of ramps and stairways.

R409.3 Continuity. Handrails shall be continuous within the full length of each ramp run or stair flight. Inside handrails on switchback or dogleg ramps and stairways shall be continuous between ramp runs or stair flights.

R409.4 Height. Top of gripping surfaces of handrails shall be 865 mm (2.8 ft) minimum and 965 mm (3.2 ft) maximum vertically above walking surfaces, ramp surfaces, and stair nosings. Handrails shall be at a consistent height above walking surfaces, ramp surfaces, and stair nosings

R409.5 Clearance. Clearance between handrail gripping surfaces and adjacent surfaces shall be 38 mm (1.5 in) minimum.

R409.6 Gripping Surface. Handrail gripping surfaces shall be continuous along their length and shall not be obstructed along their tops or sides. The bottoms of handrail gripping surfaces shall not be obstructed for more than 20 percent of their length. Where provided, horizontal projections shall occur

38 mm (1.5 in) minimum below the bottom of the handrail gripping surface.

Advisory R409.6 Gripping Surface. Pedestrians with disabilities and others benefit from continuous gripping surfaces that permit users to reach the fingers outward or downward to grasp the handrail.

R409.7 Cross Section. Handrail gripping surfaces shall have a cross section complying with R409.7.1 or R409.7.2. Where expansion joints are necessary for large spans of handrails, the expansion joint is permitted to be smaller than the specified cross section diameters for a 25mm (1 in) length.

R409.7.1 Circular Cross Section. Handrail gripping surfaces with a circular cross section shall have an outside diameter of 32 mm (1.25 in) minimum and 51 mm (2 in) maximum.

R409.7.2 Non-Circular Cross Sections. Handrail gripping surfaces with a non-circular cross section shall have a perimeter dimension of 100 mm (4 in) minimum and 160 mm (6.25 in) maximum, and a cross-section dimension of 57 mm (2.25 in) maximum.

R409.8 Surfaces. Handrail gripping surfaces and any surfaces adjacent to them shall be free of sharp or abrasive elements and shall have rounded edges.

R409.9 Fittings. Handrails shall not rotate within their fittings. Where expansion joints are necessary for large spans of handrails, the expansion joint is permitted to rotate in its fitting.

R409.10 Handrail Extensions. Handrail gripping surfaces shall extend beyond and in the same direction of ramp runs and stair flights in accordance with R409.10. Extensions shall not be required for continuous handrails at the inside turn of switchback or dogleg ramps and stairways. In alterations where handrail extensions would reduce the clear width required for pedestrian access routes, handrail extensions shall not be required.

R409.10.1 Top and Bottom Extension at Ramps. Ramp handrails shall extend horizontally above the landing for 305 mm (1.0 ft) minimum beyond the top and bottom of ramp runs. Extensions shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent ramp run.

R409.10.2 Top Extension at Stairways. At the top of a stair flight, handrails shall extend horizontally above the landing for 305 mm (1.0 ft) minimum beginning directly above the first riser nosing. Extensions shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent stair flight.

R409.10.3 Bottom Extension at Stairways. At the bottom of a stair flight, handrails shall extend at the slope of the stair flight for a horizontal distance at least equal to one tread depth beyond the last riser nosing. Extensions shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent stair flight.

R410 Visual Characters on Signs

R410.1 General. Visual characters on signs shall comply with R410.

R410.2 Finish and Contrast. Characters and their background shall have a non-glare finish. Characters shall contrast with their background with either light characters on a dark background or dark characters on a light background.

Advisory R410.2.1 Finish and Contrast. Signs are more legible for pedestrians with low vision when characters contrast as much as possible with their background. Additional factors affecting the ease with which the text can be distinguished from its background include shadows cast by lighting sources, surface glare, and the uniformity of the text and its background colors and textures.

R410.3 Case. Characters shall be uppercase or lowercase or a combination of both.

R410.4 Style. Characters shall be conventional in form. Characters shall not be italic, oblique, script, highly decorative, or of other unusual forms.

R410.5 Character Proportions. Characters shall be selected from fonts where the width of the uppercase letter ''O'' is 55 percent minimum and 110 percent maximum of the height of the uppercase letter ''I''.

R410.6 Character Height. Minimum character height shall comply with Table R410.2.5. Viewing distance shall be measured as the horizontal distance between the character and an obstruction preventing further approach towards the sign. Character height shall be based on the uppercase letter ''I''.

R410.6 VISUAL CHARACTER HEIGHT

Height to finish surface from baseline of character	Horizontal viewing distance	Minimum character height
1.0 m (3.3 ft) to less than or equal to 1.8 m (5.8 ft)	Less than 1.8 m (6.0 ft)	16 mm (0.625 in).
	1.8 m (6.0 ft) and greater	16 mm (0.625 in), plus 3.2 mm (0.125 in) per 0.3 m (1.0 ft) of viewing distance above 1.8 m (6.0 ft).
Greater than 1.8 m (5.8 ft) to less than or equal to 3.0 m (10.0 ft).	Less than 4.6 m (15.0 ft)	51 mm (2 in).
	4.6 m (15.0 ft) and greater	51 mm (2 in), plus 3.2 mm (0.125 in) per 0.3 m (1.0 ft) of viewing distance above 4.6 m (15.0 ft).
Greater than 3.0 m (10.0 ft)	Less than 6.4 m (21.0 ft)	75 mm (3 in).
	6.4 m (21.0 ft) and greater	75 mm (3 in), plus 3.2 mm (0.125 in) per 0.3 m (1.0 ft) of viewing distance above 6.4 m (21.0 ft).

R410.7 Height from Finish Surface. Visual characters shall be 1.0 m (3.25 ft) minimum above the finish surface.

R410.8 Stroke Thickness. Stroke thickness of the uppercase letter ''I'' shall be 10 percent minimum and 30 percent maximum of the height of the character.

R410.9 Character Spacing. Character spacing shall be measured between the two closest points of adjacent characters, excluding word spaces. Spacing between individual characters shall be 10 percent minimum and 35 percent maximum of character height.

R410.10 Line Spacing. Spacing between the baselines of separate lines of characters within a message shall be 135 percent minimum and 170 percent maximum of the character height.

R411 International Symbol of Accessibility. The International Symbol of Accessibility shall comply with Figure R411. The symbol and its background shall have a non-glare finish. The symbol shall contrast with its background with either a light symbol on a dark background or a dark symbol on a light background.

Figure R411

[FR Doc. 2011–17721 Filed 7–25–11; 8:45 am]

BILLING CODE 8150–01–P

FEDERAL REGISTER

Vol. 76 Tuesday,

No. 143 July 26, 2011

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Gulf of Alaska; Amendment 83; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 100107012–1352–02]

RIN 0648–AY53

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Gulf of Alaska; Amendment 83

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule to implement Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). If approved, Amendment 83 would allocate the Western and Central GOA Pacific cod total allowable catch (TAC) limits among various gear and operational sectors. Sector allocations would limit the amount of Western and Central GOA Pacific cod that each sector is authorized to harvest. This action would reduce competition among sectors and support stability in the Pacific cod fishery. This rule would also limit access to the Federal Pacific cod TAC fisheries prosecuted in State waters, commonly known as the parallel fishery, adjacent to the Western and Central GOA. This action is intended to promote community participation and provide incentives for new entrants in the jig sector. It also promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan, and other applicable laws.

DATES: Written comments must be received no later than 5 p.m. Alaska local time (A.l.t.) September 9, 2011.

ADDRESSES: Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–AY53'', by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Fax:* 907–586–7557, Attn: Ellen Sebastian.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address, e-mailed to *OIRA_Submission@omb.eop.gov,* or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the Gulf of Alaska (GOA) under the Fishery Management Plan for Groundfish of the GOA (FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 83 for review by the Secretary of Commerce (Secretary), and a notice of availability of the FMP amendment was published in the **Federal Register** (76 FR 37763) on June 28, 2011, with written comments on the FMP amendment invited through August 29, 2011. Comments may address the FMP amendment, the proposed rule, or both, but must be received by NMFS, not just postmarked or otherwise transmitted, by 5 p.m. Alaska local time (A.l.t.) on September 9, 2011, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by that time, whether specifically directed to the amendment or the proposed rule, will be considered in the decision to approve, partially approve, or disapprove the proposed amendment. Comments received after the comment period for the amendment will not be considered in that decision.

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I. GOA Pacific Fishery

A. Background

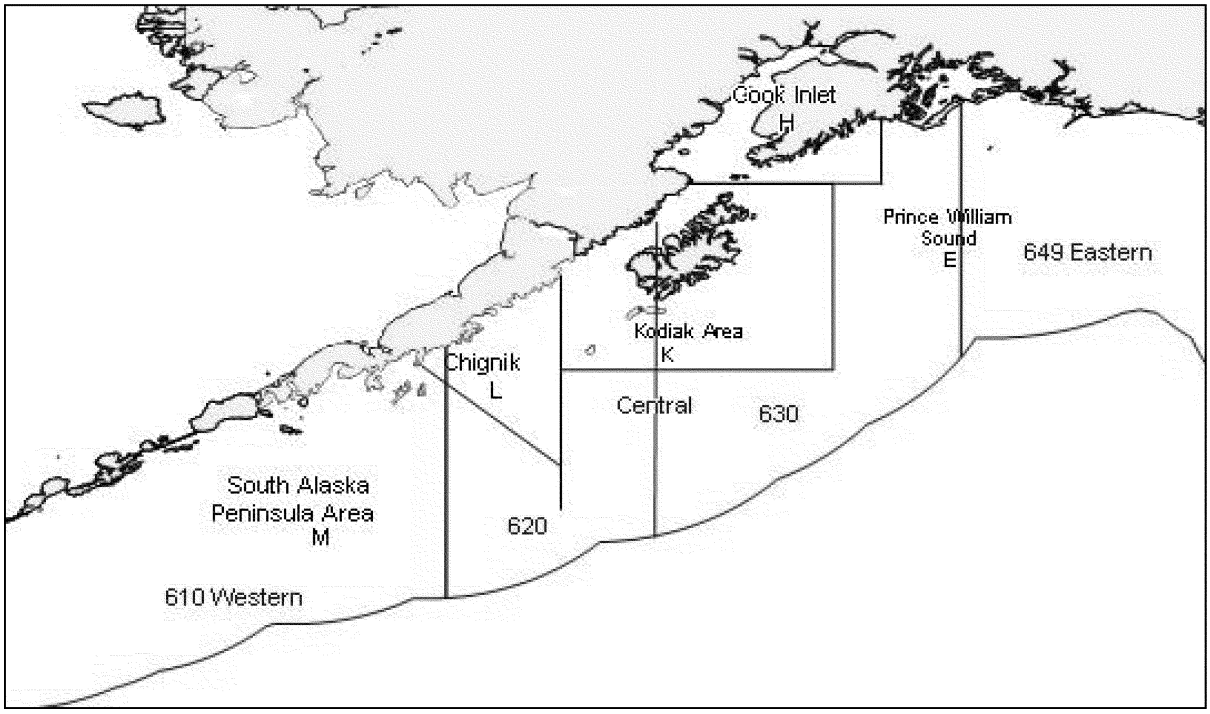
Pacific cod (*Gadus macrocephalus*) is a valuable fish resource in the GOA and is second to walleye pollock (*Theragra chalcogramma*) as the dominant species of the commercial groundfish catch in the GOA. As one of the most valuable

fish species in the GOA, Pacific cod is the primary species targeted by vessels using pot and hook-and-line gear and is an important species for vessels using the trawl gear. Smaller amounts of Pacific cod are taken by vessels using jig gear.

Section 301(a)(1) of the MSA, also known as National Standard 1, states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. Each year, the Council recommends harvest specifications to the Secretary. These specifications establish an overfishing level, acceptable biological catch (ABC), and total allowable catch (TAC) for Pacific cod among the Western, Central, and Eastern GOA regulatory areas. The GOA Pacific cod ABC is apportioned between fisheries managed exclusively by the State of Alaska (State) and fisheries managed by NMFS. The State manages a parallel Pacific cod fishery and a Guideline Harvest Level (GHL) fishery in the State waters adjacent to the GOA regulatory areas. (State-managed Pacific cod fisheries are explained in more detail in section II of this preamble.)

The State establishes a GHL for Pacific cod based on a percentage of the ABC for Pacific cod, and this GHL is available for harvest exclusively within State waters. The State GHL Pacific cod fisheries are divided into five separate areas (see Figure 1). The combined State GHL fisheries for Pacific cod are not allowed to harvest more than 25 percent of the combined Western, Central, and Eastern GOA Pacific cod ABCs (76 FR 11111, March 1, 2011).

Figure 1. Map of State GHL Pacific cod management areas (South Alaska Peninsula, Chignik, Kodiak, Cook Inlet, and Prince William Sound) and Federal regulatory areas (Western, Central, and Eastern) in the GOA.



After accounting for the State GHL fisheries, the remaining ABC in the Central and Western GOA is managed under a Federal TAC limit. The Council recommends each TAC so that total harvests under the State GHL and Federal TAC fisheries are slightly below the ABC to ensure that the ABC is not exceeded, as displayed below in Table 1. The Council recommends TACs for the Western, Central, and Eastern GOA Pacific cod fisheries with the goal of providing a conservatively managed sustainable yield in each of these three regulatory areas. In each Federal regulatory area, the State GHL portion of the ABC is applicable only to the harvest of Pacific cod in the State waters fisheries, while the TAC applies to both the Federal fisheries prosecuted in the EEZ and State-managed parallel fisheries for GOA Pacific cod.

TABLE 1—THE PORTION OF THE 2011 ABC THAT NMFS ALLOCATED TO THE PACIFIC COD FISHERIES AND PROCESSOR COMPONENTS BY GOA REGULATORY AREA. NMFS DOES NOT FURTHER ALLOCATE PACIFIC COD GHL TO STATE MANAGEMENT AREAS.

Regulatory area	State GHL fisheries	TAC fisheries	For processing by the inshore component	For processing by the offshore component
Western GOA	8.75%	26.25%	23.63%	2.62%
Central GOA	15.50	46.50	41.85	4.65
Eastern GOA	0.75	2.25	2.03	0.22

While the directed fisheries for Pacific cod in Federal waters (3 nm to 200 nm) are open, directed fisheries for Pacific cod in State waters (0 to 3 nm) are open concurrently. These fisheries in State waters, referred to as the parallel fisheries, are prosecuted under virtually the same rules as the Federal fisheries, with catch accrued against the Federal TAC. State GHL fisheries are typically open when Federal/parallel fisheries are closed and are prosecuted in State waters. Each fishery is described in more detail in section II of this preamble.

B. Current Apportionments in the GOA Pacific Cod TAC Fisheries

Historically, the majority of the GOA Pacific cod TAC has been apportioned to the Central GOA regulatory area, with smaller apportionments made to the Western—and even less to the Eastern—regulatory areas. For example, in the 2011 fishing year the Council recommended that 62 percent of the GOA TAC be allocated to the Central GOA (40,362 mt), 35 percent to the Western GOA (23,785 mt), and 3 percent to the Eastern GOA (1,953 mt) (76 FR 11111, March 1, 2011). In the Western and Central GOA regulatory areas, 60 percent of the annual TAC is apportioned to the A season for hook-and-line, pot, and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10; and forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot, and jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.20(a)(12) and 679.23(d)(3)). The Eastern GOA has no seasonal apportionments.

All directed fishing allowance and incidental catch of Pacific cod that may occur in other groundfish fisheries that accrues before June 10 are managed such that total harvest in the A season is no more than 60 percent of the annual TAC. This management methodology began in 2001 to meet the intent of the Steller sea lion protection measures (66 FR 7276, January 22, 2001) by temporally dispersing the Pacific cod removals, thereby reducing the likelihood of harvest in the A season exceeding 60 percent of the annual TAC. The GOA Pacific cod A season directed fishery must close by June 10, but NMFS usually closes the season much earlier, when the directed fishing allowance has been harvested. Managers attempt to time the A season closure to leave a sufficient portion of the A season TAC for incidental catch of Pacific cod in other directed fisheries. Any A season overage or incidental catch between the end of the A season (June 10) and the beginning of the B season (September 1) counts towards the B season TAC. The B season ends on November 1 for trawl vessels and on December 31 for non-trawl gear vessels, unless the directed fishing allowance is reached earlier, or specific limits on the amount of Pacific halibut mortality are reached.

The Pacific halibut annual mortality limit is commonly known as the halibut prohibited species catch (PSC) limit. The halibut PSC limit ensures that the groundfish fisheries do not exceed a maximum amount of halibut mortality in specific groundfish fisheries, including Pacific cod in the GOA.

In the GOA Federal regulatory areas, all incidentally caught Pacific cod must be retained during the directed Pacific cod season. When the directed fishing for Pacific cod is closed, incidentally caught Pacific cod in Federal waters (3 nm to 200 nm off Alaska), can only be retained up to a maximum retainable amount (MRA) established at 20 percent (§ 679.20(e)(1)). The MRA limits the amount of catch for species not open for directed fishing that may be retained to a percentage of those species open for directed fishing. Vessels fishing in the halibut and sablefish individual fishing quota (IFQ) fisheries are required to retain Pacific cod up to the MRA (see § 679.27(c)(2)), unless NMFS has prohibited the retention of this species (see § 679.7(f)(8)(i)(B)).

Pacific cod in the GOA is further apportioned on the basis of processor component (inshore and offshore) and season, as specified at § 679.20(d)(1). Under Amendment 23 to the GOA FMP (57 FR 23321, June 3, 1992), 90 percent of the Western, Central, and Eastern TAC is allocated to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component. The inshore component is composed of three types of processors: (1) Shoreside plants, (2) stationary floating processors (SFP), and (3) vessels with catcher/processor (C/P) endorsements less than 125 ft (45.7 m) in length overall (LOA) that process less than 126 mt (round weight) per week of inshore pollock and Pacific cod, combined. The owners and operators of SFPs and C/Ps less than 125 feet, including mothership vessels less than 125 ft (45.7 m) LOA with C/P endorsements, can elect to participate in the inshore component of the fishery on an annual basis. Similarly, C/P's and motherships less than 125 ft (45.7 m) LOA may choose to participate in the offshore component.

Motherships are vessels that receive and process catch from other vessels. Motherships may be vessels that only process catch received from other vessels, or they may also operate as C/Ps. The offshore component includes all vessels that process groundfish harvested in the GOA and that are not included in the inshore component. For example, all motherships, including those less than 125 ft (45.7 m) LOA, not endorsed as a C/P are ineligible for an inshore processing endorsement on their Federal fishing permit and are, by default, part of the offshore component.

C. Current Harvest in the GOA Pacific Cod Fishery

During some recent years, the annual GOA Pacific cod TACs allocated to the offshore sector have not been fully harvested. Inshore TACs typically have been fully harvested in the Central GOA. Harvests in the Western GOA have increased in recent years from only 68 percent of the inshore TACs harvested in 2006, to 99 percent and 101 percent of the inshore TAC harvested in 2009 and 2010, respectively. Similarly, the Eastern GOA regulatory area experienced recent increases in harvest of Pacific cod from 13 percent of the TAC in 2008 to 50 percent of the TAC in 2010. Beginning in 2004, a substantial proportion of the offshore TACs in each regulatory area has not been harvested. Inseason management has opened the offshore TACs concurrently with the inshore TACs, but has closed the offshore TACs when the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod A season fisheries ended to prevent overharvest of the A season TAC by the BSAI C/P fleet. In 2003, the Western GOA offshore A season was open to the BSAI C/P fleet, and the Western GOA offshore A season TAC was overharvested (220 percent). As a result, the 2003 Western GOA offshore B season was not opened.

The following summary of Pacific cod harvests in the GOA, by sector, combines harvest data from State and Federal waters. Vessels using trawl gear harvested the largest share of the catch in every year from 1991 through 2002, except in 2000. Trawl landings of Pacific cod peaked in 1990 and 1991, at nearly 60,000 mt per year, and declined to less than 20,000 mt in recent years. Since 1990, hook-and-line harvests have fluctuated between 6,000 mt and 15,000 mt per year. Vessels using pot gear began to make significant landings in the early 1990s. Pot and jig landings have increased substantially since 1997 when the State implemented a Pacific cod GHL fishery, which generally

allows the use of only pot and jig gear. In each year since 2003, vessels using pot gear harvested the largest single-gear share of the catch. Most of the Pacific cod harvested by jig vessels from 1995 through 2000 occurred prior to June 10 (93 percent to 94 percent); however, these portions declined to 25 percent in the Western GOA and 69 percent in the Central GOA during recent years.

Total harvests of Pacific cod by all sectors peaked in 1999 at nearly 82,000 mt, and were as low as 48,000 mt in 2005 and 2006. Total Federal catch as a percentage of the Federal TAC has increased in recent years; however, the portion harvested generally declined in the years following the implementation of regulations to protect Steller sea lions in 2001.

II. Current Management of the GOA Pacific Cod Fisheries

A. GOA Federal Fisheries

To meet the management objectives for GOA Pacific cod fisheries and the harvest targets set during the harvest specification process pursuant to § 679.20(a), NMFS requires vessel operators fishing in Federal waters to comply with various restrictions, including fishery time and area closures and halibut PSC limits. In addition, groundfish harvests by several other groups of vessels have limits, known as sideboards, placed on their catches of Pacific cod in Federal waters and in State waters during the State parallel fisheries in the GOA. Groups with sideboards include: (1) Catcher vessels (CVs) that qualified under the American Fisheries Act (AFA); (2) crab vessels that received crab quota share (QS) under the Crab Rationalization Program (70 FR 10174, March 2, 2005) and are not otherwise subject to sideboard limitations under the AFA; and (3) vessels that are subject of the Amendment 80 program (72 FR 52668; September 14, 2007). Similarly, trawl CVs that also participate in the Rockfish program are allocated 2.09 percent of the Central GOA regulatory area Pacific cod TAC to support incidental catch of Pacific cod by cooperatives in the rockfish fisheries.

Section 679.64 establishes groundfish harvesting and processing sideboard limits on AFA C/Ps and CVs in the GOA. The sideboard limits are necessary to protect the interest of fishermen and processors who do not directly benefit through the AFA from those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. AFA CVs that qualify under § 679.64(b)(2)(ii) are exempt from GOA sideboard limits. Sideboard limits for non-exempt AFA CVs operating in the GOA are calculated based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Sideboard limits also restrict vessels participating in the BSAI snow crab fishery from using the increased flexibility provided by the Crab Rationalization Program (70 FR 10174, March 2, 2005) from expanding their level of participation in the GOA groundfish fisheries. Non-AFA crab vessels that fished snow crab from 1996–2000 and any vessels fishing under the authority of groundfish licenses derived from those vessels are restricted to their collective historical landings in most GOA groundfish fisheries, as described in 50 CFR 680.22(d) and (e). Some affected vessels also are subject to another type of sideboard; these vessels are restricted from participating in the directed fishery for Pacific cod in the GOA, as described at § 680.22(a)(2). Targeted and incidental catch of sideboard species made by both non-exempt AFA and non-AFA crab vessels are deducted from their respected sideboard limits. NMFS calculates and publishes sideboard limits annually as part of the harvest specifications process.

To monitor compliance with catch limits, PSC limits, and sideboard regulations, NMFS requires various permits that authorize or limit access to the groundfish fisheries, such as a Federal fisheries permit (FFP), license limitation program (LLP) license, and Federal processor permit (FPP).

1. Federal Fisheries Permit (FFP)

All vessels participating in the GOA Pacific cod fishery, including motherships operating in the EEZ of the GOA, are required to have an FFP onboard the vessel at all times (see § 679.4(b)(9)). An FFP authorizes a vessel owner to deploy a vessel to conduct operations in the GOA or BSAI under the following categories: catcher vessel, catcher/processor, mothership, tender vessel, or support vessel. A vessel may not be operated in a category other than the ones specified on the FFP. Owners and operators of harvesting vessels that participated in the GOA Pacific cod fisheries, except vessels using jig gear, are required to have an FFP endorsement for the species and regulatory area(s) in which the fishery is prosecuted. However, to participate in the offshore component of the GOA Pacific cod fishery as a mothership, only a mothership and area endorsement are required.

An FFP can include many endorsements, such as type of gear (*e.g.* pot, hook-and-line, and trawl), vessel operation category, and regulatory area (*e.g.,* GOA) in which a permitted vessel is eligible to fish, and in some fisheries a species endorsement. For example, to harvest Pacific cod in the GOA Federal fisheries, the harvesting vessel must be designated on an FFP with endorsements that indicate the gear type used to prosecute the fishery. A GOA inshore processing endorsement is available for C/Ps under 125 feet (45.7 m.) LOA that wish to process GOA inshore Pacific cod; vessels exclusively endorsed as motherships that do not harvest groundfish in the GOA are not eligible to participate in the inshore component of the GOA Pacific cod fishery under the authority of an FFP.

The operators of harvesting vessels that possess an FFP are required to comply with NMFS observer coverage requirements (§ 679.50(a)). In addition, Federally permitted vessels participating in a pollock or Pacific cod fishery in the GOA are required to have onboard a transmitting vessel monitoring system (VMS), as described at § 679.28(f)(6). A VMS consists of a NMFS-approved transmitter that automatically determines a vessel's position and transmits that information to NMFS. While Pacific cod directed fisheries are open, all harvesting vessels with an FFP endorsed with a hook and line, pot, or trawl Pacific cod endorsement are required to have an operational VMS, regardless of where the vessel is fishing at the time or what the vessel is targeting, as described at § 679.28(f)(6). Thus, a VMS is required of all vessels with an FFP endorsed with a Pacific cod hook and line, pot, or trawl gear while fishing in the adjacent State waters (0 to 3 nm). However, vessels fishing exclusively in State waters are not required to be designated on an FFP, and the operator of such a vessel is not subject to NMFS observer, VMS, or recordkeeping and reporting requirements unless specified by the State.

FFPs are issued on a 3-year cycle. Each permit is in effect from the date of issuance through the end of the 3-year cycle. A vessel operator with an FFP can surrender the permit at any time and have the FFP reissued any number of times within the 3-year cycle. This flexibility is intended to provide a vessel owner with opportunities to participate in State waters fisheries, for which no FFP is required, without having to comply with the Federal requirements for operators of harvesting vessels designated on an FFP.

While any vessel owner can apply for an FFP with any combination of mothership, C/P, CV, area, gear, or

species endorsements, an FFP with a specific set of endorsements, by itself, does not necessarily authorize the operator or the vessel to participate in the Pacific cod fishery in the GOA. As in most fisheries in Federal waters, an LLP license also is required to participate in the GOA Pacific cod fishery.

2. License Limitation Program (LLP)

Prior to the establishment of the current LLP requirement, several management measures limited participation in the Federal GOA Pacific cod fisheries. Regulations restricting new vessels from entry into the groundfish fisheries were established in 1995 (60 FR 40763, August 10, 1995). Also, the AFA, signed into law on October 21, 1998 (Pub. L. 105–277), prohibited C/Ps that qualified under the AFA (AFA C/Ps) from fishing in the GOA. The current LLP requirements were implemented under Amendment 41 to the FMP (63 FR 52642, October 1, 1998). This action further limited entry into most fisheries prosecuted in Federal waters, and established a 52,600 nm trawl closure in Eastern GOA regulatory area.

Effective since 2000, a groundfish LLP license authorizes a vessel to be used in a directed fishery for groundfish. Vessel operators fishing for groundfish must have an LLP license onboard at all times the vessel is engaged in fishing activities. LLP licenses are issued by NMFS to qualified persons, and an LLP license authorizes a license holder to deploy a vessel to conduct direct fishing for groundfish. In the GOA Pacific cod fisheries, several endorsements are required to be specified on an LLP license, such as vessel operation type, area, gear designation, and maximum length overall (MLOA). Several exemptions to the LLP requirement are listed at § 679.4(k)(2), including an exemption for specific jig vessels less than or equal to 60 feet (18.3 m) LOA.

Unlike the FFP, the endorsements on an LLP license are not generally severable from the license. An LLP license, with its associated endorsements, can be reassigned to a different vessel only once per year. In general, a vessel is authorized to only use gear consistent with the gear designation on the LLP. However, like FFPs, vessels fishing in the parallel fisheries are not required to be designated on an LLP license because these fisheries occur only in State waters.

3. Federal Processor Permit (FPP)

Federal processor permits (FPPs) may be issued for shoreside processors and stationary floating processors (SFPs). SFPs are vessels of the United States operating as processors in the Alaska State waters that remain anchored or otherwise remain stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI. An FPP is required for shoreside processors and SFPs that receive and/or process groundfish harvested from Federal waters or from any Federally-permitted vessels. FPPs are non-transferable, 3-year permits issued to owners on request and without charge. These permits are authorized at § 679.4(f).

Owners of SFPs may apply for a GOA inshore processing endorsement on their FPP. This endorsement is required to process GOA inshore Pacific cod and pollock. SFPs that hold an inshore processing endorsement are prohibited from processing GOA Pacific cod in more than one single geographic location in the GOA during a fishing year. Although FPPs can be surrendered at anytime during a fishing year, a GOA inshore processing endorsement cannot be rescinded for the duration of a fishing year. It may be changed for the next fishing year by submitting an application for permit amendment prior to the beginning of that fishing year. Vessels holding the GOA inshore processing endorsement face additional operating restrictions described at § 679.7. During any calendar year, an FPP permit holder operating in the GOA can only operate as part of the ''inshore component in the GOA,'' as defined at § 679.2. All vessels participating in the GOA groundfish fisheries are restricted from operating in both the ''offshore component in the GOA'' and the ''inshore component in the GOA'' during the same calendar year, as prohibited at § 679.7(a)(7)(iv) and (v). For example, during a calendar year an owner of an FFP issued a GOA inshore processing endorsement on their FPP cannot also hold an FFP that authorizes the license holder to conduct operations in the GOA as a catcher vessel, catcher/processor, mothership, tender vessel, or support vessel for groundfish. Similarly an FFP license holder with a GOA catcher/processor endorsement cannot be used as a SFP in the ''inshore component of the GOA'' unless it first surrenders its FFP and is issued an FPP that meets the permitting requirements to operate at as SFP at a single geographic location in the GOA.

B. GOA Parallel Fisheries

During the Federal Pacific cod TAC fisheries, the State creates a parallel Pacific cod fishing season by generally adopting NMFS management actions in State waters; however, trawl gear is generally not allowed within State waters of the GOA. The State has management authority for groundfish resources within State waters, and the Commissioner of the Alaska Department of Fish and Game (ADF&G) opens parallel fisheries through emergency order under the Parallel Groundfish Fishery Emergency Order Authority at 5 AAC 28.086. These emergency orders establish parallel fishing seasons that allow vessels to fish for groundfish, including Pacific cod, within State waters with the same season as the Federal seasons. In addition, the Commissioner is authorized to open or close the fisheries under emergency order to adapt to unanticipated openings or closures of the Federal fisheries. There are no limits on the proportion of the Pacific cod TAC that may be harvested in State waters.

C. GOA State Waters Fisheries

In 1997, the State began managing Pacific cod fisheries inside of 3 nm (referred to as the State waters fisheries or State GHL fisheries) that are generally open when the Federal and parallel fisheries are closed. The State waters Pacific cod seasons are managed under five Pacific cod management plans under the authority of State regulation. In the Prince William Sound (PWS) (5 AAC 28.267), the Kodiak (5 AAC 28.467) and the South Alaska Peninsula (5 AAC 28.577) management areas, the State waters Pacific cod fisheries open seven days after the Federal inshore A season for the respective regulatory area closes. The Cook Inlet Pacific cod fishery is authorized under 5 AAC 28.367 to open 24 hours after the Central GOA inshore A season closes, and the opening date for the Pacific cod fishery in the Chignik Area is set in regulation as March 15 (5 AAC 28.537). The State waters fisheries close when the GHL is harvested, or when the Commissioner closes the fishery under emergency order, on December 31, or whichever occurs later. Closing of the State waters fisheries typically occurs by August 31 to coincide with the opening of the B season parallel/Federal fishing season, as described in more detail in section 2.1.2 of the EA/RIR/IRFA for this action (see **ADDRESSES**).

The GOA Pacific cod State waters fisheries are allocated a specified portion of the Federal ABC. State waters fisheries' portions are managed by the Alaska Department of Fish and Game (ADF&G) toward a GHL, which limits catch in the fishery in a manner similar to management of the Federal TAC. If a GHL is fully harvested, the GHL can be increased on an annual basis up to 25

percent of the Pacific cod ABC in each GOA regulatory area, the maximum level permitted by State regulation. In 1997, 15 percent of the Pacific cod ABC in each of the three GOA regulatory areas was allocated among the State waters fisheries. Since then, allocations of Pacific cod GHL in the State waters fisheries have increased to 25 percent of the ABCs in each regulatory area. Allocations of GHL to the Eastern GOA have fluctuated in recent years. In 2004, the Eastern GOA GHL was lowered to 10 percent of the ABC because that allocation had not been fully utilized by the fishery. The portion of the ABC allocated to the State waters fishery was increased to 15 percent in 2010, and 25 percent in 2011, in response to increased fishing effort and catch in the State waters fishery in the Eastern GOA.

State waters fisheries have gear and vessel-length restrictions. The GOA State waters Pacific cod fisheries are open to only pot and jig gear in all GOA State management areas except in Prince William Sound, which has allowed longline gear since 2009. In several areas, vessel size restrictions limit harvests by vessels greater than 58 ft (17.7 m) LOA or exclude those vessels from participating in the fisheries. Of the total Central GOA ABC, the State waters fisheries allocate 16.94 percent to the pot sector and 8.06 percent to the jig sector. Although there is no allocation specified in regulation to the South Alaska Peninsula area jig fleet, pot gear is allocated 85% of the GHL, which represents 21.25 percent of the Western GOA ABC. Allocations of GHL to pot vessels have generally been fully harvested in all State management areas except Prince William Sound from 1997 through 2009. Jig harvests were relatively high during 2003 through 2005 and again in 2009, but declined substantially in 2006 through 2008. A combination of poor weather conditions, difficulty finding fish in State waters, and high operating costs contributed to low levels of jig effort in those years. Most unharvested State-waters GHL was unharvested jig GHL resulting in a catch that was substantially below the GHL in all four Western and Central GOA State management areas in 2006 and 2007; and in Kodiak and Cook Inlet during 2008. In 2009, jig vessels in the Kodiak Management Area harvested the entire jig GHL, and more than 90 percent of the overall GHL was harvested in each GOA State management area, as described in more detail in section 2.1.2 of the EA/RIR/IRFA for this action. Generally, unharvested GHL may be rolled over to other gear types according to State regulatory management plans.

Many participants in the State waters Pacific cod fisheries also participate in the parallel/Federal Pacific cod fisheries. During 1997 through 2008, an average of 75 percent of Central GOA State waters pot catch and 93 percent of Western GOA State waters pot catch was harvested by vessels that also participated in the GOA Pacific cod parallel/Federal fishery (using any gear type) in a particular year. The majority (85 percent to 93 percent) of State waters pot catch is harvested by vessels that hold LLP licenses and also have access to the Federal waters fishery. There is less overlap between participants in the State waters jig fishery and the parallel/Federal waters Pacific cod fishery. The majority of vessels that participate in the State waters jig fishery do not participate in the parallel/Federal waters Pacific cod fishery. During 1997 through 2008, an average of only 43 percent of Central GOA State waters jig catch and 25 percent of Western GOA State waters jig catch was harvested by vessels that also participated in the GOA parallel/Federal fishery in a particular year.

Owners of some vessels that fish for Pacific cod in the Federal waters have surrendered their FFP licenses before fishing in the parallel waters or in the non-parallel-State waters Pacific cod fishery to avoid NMFS observer, VMS, and recordkeeping and reporting requirements, only to have the permits reissued for the opening of the Federal waters fishery. Surrendering or amending an FFP may degrade the quality of information available to manage the Pacific cod fishery.

III. Need for Action

A. Rationale for Amendment 83

Competition among participants in the Western and Central GOA Pacific cod fisheries has intensified in recent years. Because the TACs are not divided among gear or operation types, there is a derby-style race for fish and competition among the various gear types for shares of the TACs. The proposed action would divide the Western and Central GOA Pacific cod TACs among the various gear and operation types, based primarily on historical dependency and use by each sector, while also considering the needs of fishing communities. This amendment is intended to enhance stability in the fishery by enabling operators within each sector to plan harvesting or processing activity during a fishing year, reduce competition among sectors, and preserve the historical division of catch among sectors, while providing opportunities for new entrants in these fisheries. .

NMFS and the Council recognize that participants with significant long-term investments and extensive catch histories are highly dependent on the GOA Pacific cod fisheries and need stability in the form of sector allocations. If Amendment 83 is approved, it would supersede the inshore/offshore allocations and establish sector allocations for each gear and operation type in the Western and Central GOA Pacific cod fisheries, based primarily on historical catches, as well as conservation, catch monitoring, and social objectives, including considerations for small boat sectors and coastal communities traditionally participating in the inshore Pacific cod processing sector.

B. Problem Statement

To address these issues, the Council adopted a problem statement that is summarized below. The complete text can be found in section 1.1.2 of the EA/RIR/IRFA for this action (see **ADDRESSES**).

The limited access derby-style management of the Western GOA and Central GOA Pacific cod fisheries has led to competition among the various gear types (trawl, hook-and-line, pot and jig) and operation types (catcher processor and catcher vessel) for shares of the total allowable catch (TAC). Competition for the GOA Pacific cod resource has increased for a variety of reasons, including increased market value of cod products, rationalization of other fisheries in the BSAI and GOA, increased participation by fishermen displaced from other fisheries, reduced Federal TACs due to the State waters cod fishery, and Steller sea lion mitigation measures including the A/B seasonal split of the GOA Pacific cod TACs. The competition among sectors in the fishery may contribute to higher rates of bycatch, discards, and out-of-season incidental catch of Pacific cod.

Participants in the fisheries who have made long-term investments and are dependent on the fisheries face uncertainty as a result of the competition for catch shares among sectors. To reduce uncertainty and contribute to stability across the sectors, and to promote sustainable fishing practices and facilitate management measures, the Western and Central GOA Pacific cod TACs should be divided among the sectors. Allocations to each sector would be based primarily on qualifying catch history, but may be adjusted to address conservation, catch monitoring, and social objectives, including considerations for small boat sectors and coastal communities. Because harvest sector allocations would supersede the inshore/offshore processing sector allocations for Pacific cod by creating harvest limits, the Council may consider regulatory changes for offshore and inshore floating processors in

order to sustain the participation of fishing communities.

In addition, the Council recognized that the timing of the Pacific cod A and B seasons may have limited the participation of jig vessels in the parallel and Federal fisheries of the GOA. The State waters jig allocation has gone uncaught in some years, potentially due to the lack of availability of Pacific cod inside three miles. A non-historical Federal catch award, together with the provision of access in Federal waters for the State Pacific cod jig allocations, offers entry-level opportunities for the jig sector.

Currently, there are no limits on entry into the parallel waters groundfish fisheries, and no limits on the proportion of the GOA Pacific cod TAC that may be harvested in parallel waters. There is concern that participation in the GOA Pacific cod parallel waters fishery by vessels that do not hold LLP licenses may increase. The Council, in consideration of options and recommendations for the parallel fishery, will need to balance the objectives of providing stability to the long term participants in the sectors, while recognizing that new entrants who do not hold Federal permits or licenses may participate in the parallel fishery.

C. Amendment 83 Background

In 1999, the Council began developing a package of measures to rationalize the GOA groundfish fisheries, which included options to develop catch share management for CV and C/Ps in the Pacific cod fisheries. In April 2003, the Council defined a set of preliminary alternatives. From 2003 through 2006, the Council worked to develop and refine these alternatives. However, in December 2006, the Council decided to delay further consideration of the comprehensive rationalization program and instead, proceed with the more discrete issue of allocating the Pacific cod resource to various gear sectors. Simultaneously, the Council recommended limiting future entry to the GOA groundfish fisheries by extinguishing latent LLP groundfish licenses.

The Council also has taken final action on separate amendment packages to revise the LLP. In April 2008, the Council took final action to extinguish area endorsements on latent GOA and BSAI trawl LLP licenses. The final rule for that action was published August 14, 2009 (74 FR 41080). Subsequently, in April 2009, the Council recommended Amendment 86 to the FMP. That amendment, also known as the GOA fixed gear recency action, would add non-severable, gear-specific Pacific cod endorsements to fixed gear licenses that qualify under the landings thresholds, and is intended to limit entry into the directed Pacific cod fisheries in the Federal waters of the Western and Central GOA. The notice of availability for Amendment 86 action was published July 2, 2010 (75 FR 38452), the proposed rule was published July 23, 2010 (75 FR 43118), and the final rule was published on March 22, 2011. It became effective on April 21, 2011 (76 FR 15826).

The Council reviewed a preliminary EA/RIR/IRFA of Amendment 83 at its September 2007 meeting, and reviewed an initial draft EA/RIR/IRFAs in June 2008, December 2008, and October 2009. At its October 2009 meeting, the Council released the analysis for public review, and the Council took final action on GOA Amendment 83, this proposed action, at the December 2009 meeting. If approved by the Secretary of Commerce, Amendment 83 would modify the following provisions in the FMP: the executive summary; section 3.2.6, Management Measures for the GOA Groundfish Fisheries; section 3.3.1 License Limitation Program; and section 4.1.2.2, Pacific cod. Amendment 83 sector allocations cannot be implemented mid-year; therefore, the final rule implementing Amendment 83, if approved, would be effective the following January 1st. Thus, the earliest effective date for the rule implementing Amendment 83 would be January 1, 2012.

IV. Description of the Proposed Action

A. Affected GOA Regulatory Areas

If approved, this action would affect the GOA management area; it is not intended to directly affect fishing behavior outside of the GOA or in the BSAI management area. The proposed sector allocations would divide the Western and Central GOA Pacific cod TACs among the various gear and operation types, based primarily on the historical distribution of catch. Currently, the Western and Central GOA A season TACs are fully utilized, and vessels race to fully harvest the TAC. The GOA Pacific cod B season TACs have not been fully harvested in recent years, particularly in the Western GOA, due in part to reaching the halibut PSC limits; therefore, this proposed action would also further allocate PSC limits throughout the GOA. Sector allocations in the Western and Central GOA and GOA-wide PSC limit apportionments are expected to reduce competition among sectors in the A season and B season, but may not reduce competition among vessels within each sector, nor slow down the fisheries' prosecution.

In recent years, only a small proportion of the Eastern GOA TAC has been harvested, although effort and catch has increased in recent years. From 2000 through 2008, the Pacific cod harvest in the Eastern GOA ranged from 0.4 percent to 11.8 percent of the Eastern GOA TAC, and was 39.3 percent and 49.8 percent of the Eastern GOA TAC in 2009 and 2010, respectively. The potential exists that the lack of any sector allocations in the Eastern GOA would provide an incentive for increased effort in that fishery. However, the Council did not perceive a need for such an action due, in part, to the differences in the prosecution of the Pacific cod fisheries in the Eastern regulatory area, such as the extensive trawl closures effectively prohibiting trawl fishing in the Southeast Outside district of the Eastern regulatory area. As a result, the Council recommended that the Eastern GOA Pacific cod TAC not be allocated among sectors by this action.

Two elements of this proposed rule would apply to the entire GOA, including the Western, Central, and Eastern GOA regulatory areas. First, the hook-and-line CV and C/P halibut PSC limits would apply to the entire GOA, as described in more detail in section VI of this preamble. Halibut bycatch by hook-and-line vessels operating in the Western, Central, and Eastern GOA would accrue against these PSC limits. Second, NMFS is proposing new FFP permitting requirements that would restrict the reissue of, or amendments to, FFPs by permit holders endorsed by gear and operation type to participate in all Federal or parallel Pacific cod fisheries throughout the Western, Central, and Eastern GOA, as described in more detail in section IX of this preamble.

B. Sector Designations by Area

The sectors designated by the Council to receive allocations of Pacific cod are identified in Tables 2a and 2b of this preamble and are identical in the Western and Central GOA except for hook-and-line CV sectors. In both areas the proposed sectors include jig, hook-and-line C/P, pot CV and C/P combined, trawl C/P, trawl CV, and hook-and-line CV; however, in the Central GOA, the hook-and-line CV sector would be further divided by vessel length. In the Central GOA hook-and-line CVs less than 50 ft (15.2 m) LOA (<50 ft (15.2 m) LOA) are in one sector and hook-and-line CVs greater than or equal to 50 ft (15.2 m) (≥50 ft (15.2 m)) are in another sector. Historically, the majority of catch

by hook-and-line CVs has been made by vessels <50 ft (15.2 m) LOA, but in recent years, there has been a substantial increase in effort by hook-and-line CVs that are between 50 ft (15.2 m) and 60 ft (18.3 m) LOA. Dividing this sector at 50 ft (15.2 m) LOA protects smaller boats from an influx of effort by vessels ≥50 ft (15.2 m) LOA. The Council recognized that in the Central GOA the increased competition appears to result in safety at sea concerns, as smaller boats compete with larger vessels. However, by establishing a CV hook-and-line split, vessels ≥50 ft (15.2 m) LOA that are long-time participants in the fishery would share an allocation with these more recent entrants. A similar CV sector split was not recommended for the Western GOA. The Western GOA has not seen a similar increase in effort by CVs ≥50 ft (15.2 m) LOA. Moreover, the Western GOA hook-and-line CV sector has historically harvested a small percentage of the TAC, and if the TAC was further apportioned by vessel length, this sector's allocation would not support a directed fishery.

Under this action, the pot CV and pot C/P sectors would be combined in the Western and Central GOA because catch by pot C/Ps has been relatively small, and if apportioned individually, Pacific cod allocations for pot C/Ps would be extremely low. NMFS' experience with similar sector allocations has shown that small allocations can be difficult to manage, depending on the level of participation and effort in the sector. Moreover, most vessels that participated as pot C/Ps in the GOA Pacific cod fishery in recent years also have fishing history as pot CVs, and would contribute catch history to both the pot C/P and CV allocations. Therefore, the Council recommended that the pot C/P and CV sectors receive a combined allocation in each area.

C. Qualifying Catch History

For Amendment 83 the Council defined each qualifying catch history as all retained catch of Pacific cod from both the Federal and parallel waters fisheries by season. In calculating each sector's directed and incidental catch histories for this action, the Council had several data sources to choose from, including ADF&G Fish Tickets (Fish Tickets) and weekly production reports. Fish Tickets are issued by processors to CVs when a CV delivers fish for processing. Information on the Fish Ticket indicates the vessel that delivered the fish and the weight of that fish. Weekly Production Reports (WPRs) are submitted to NMFS by processors, including C/Ps, of the amounts of various fish products for that processor for the week listed.

Two accounting systems have been used to compile catch histories in the GOA Pacific cod fishery. The Blend database was used as NMFS' accounting system from 1995 through 2002, and is composed of WPRs and observer data. Since 2003, NMFS has relied on the Catch Accounting database, which is composed of WPRs, Fish Tickets, and observer data. NMFS manages the Pacific cod fishery inseason with catch information collected from these databases. NMFS inseason management requires prompt reporting of catch to successfully manage the fisheries to stay within the established TACs and PSC limits. Fish Ticket information prior to 2008 was not available quickly enough from ADF&G for NMFS' inseason management purposes because complete Fish Ticket data from the State can be submitted to NMFS up to three months into the following year. In addition, data from non-electronic WPRs and Fish Tickets takes time to compile and process. For these reasons, NMFS created an alternative database system for tracking catch that includes an electronic reporting system (eLandings) for commercial fishery landings and production used by NMFS and the State.

Since 2007, the NMFS Catch Accounting database and the ADF&G Fish Ticket Database have generally been in close agreement for retained catch estimates. The largest differences in the catch histories reported in the ADF&G Fish Ticket Database and those reported in the Blend and Catch Accounting databases are between the jig CV datasets, as reported in section 2.2.2 and Appendix B of the EA/RIR/IRFA for this action (see **ADDRESSES**). However, the proposed allocation to the jig sector is not set at historic catch but is initially set higher to promote new entrants to the fishery. Under this proposed action, the jig sector's allocation is expected to vary from season to season based on the performance of that sector in the fishery. The proposed jig sector allocations would be deducted from the Federal TAC before other sector allocations are calculated. Unused allocations to the jig sector would be rolled over to other Federal sectors beginning with participants in the CV sector. Allocations to the jig sector are discussed in more detail in part A of section V of this preamble.

For C/Ps, the Council chose to use the NMFS Blend and Catch Accounting databases for purposes of developing the catch histories used in this action rather than WPRs. The Catch Accounting database relies on WPRs for C/Ps with 30 percent observer coverage and observer data for vessels with 100 percent observer coverage. Discrepancies between WPRs and the Blend and Catch Accounting databases are expected to be the result of underreporting on WPRs compared to observer data, the use of product recovery rates to back-calculate round weights for catch recorded on WPRs, and the increased use of observer estimates for C/Ps in Blend and Catch Accounting data. The EA/RIR/IRFA for this action describes these discrepancies in more detail in Appendix B (see **ADDRESSES**).

The Council elected to use the Blend and Catch Accounting databases to calculate qualifying catch history for C/Ps based on recent experience with similar actions. In other previous actions, most notably BSAI Amendments 80 and 85, the Council used the data from Fish Tickets for CVs and WPRs for C/Ps to calculate qualifying catch history. One reason for selecting this alternate approach is because certain product types, such as fishmeal, can be excluded from catch estimates. The inclusion of fishmeal was an issue in Amendments 80 and 85 because smaller vessels generally lack the capacity to process meal and catch histories might underestimate actual catch. For this proposed action, the Council decided to not exclude fishmeal from the definition of qualifying catch, even though WPRs in the GOA indicated that no C/Ps produced fishmeal from Pacific cod during the 1995 through 2006 fishing seasons.

For CVs, the Council decided to calculate the catch histories used in this action based on Fish Tickets rather than the Blend and Catch Accounting databases. Fish Tickets are a more comprehensive record of catch than the Blend database for CVs. As a result, catch estimates based on Fish Tickets are generally higher than those from the Blend database, which are based on WPRs and observer data. Catch Accounting estimates for CVs are based on Fish Tickets for vessels that deliver shoreside and use eLandings. The retained catch estimates are very similar between the Catch Accounting database and the ADF&G Fish Ticket Database; however, the catch history requested by the Council for this action extended back further than the advent of the Catch Accounting database in 2003. Therefore, the Council recommended using the catch history provided by Fish Tickets to provide the most comprehensive data for CVs.

In the Western GOA, the four options for calculating catch history included

one option consisting of all retained catch during 1995 through 2005; see Table 2a of this preamble. This period includes six years of catch history prior to implementation of the Steller sea lion protection measures in 2001. The Steller sea lion measures resulted in a shift of catch from trawl gear to pot gear. By including the earlier time period, this action accounts for the catch history of the trawl sector prior to this shift and generally favors trawl vessels. In the Central GOA the catch histories include more recent years, 2002 through 2008, and generally favor the pot CV sector and to a lesser extent the hook-and-line sectors. The options in the Central GOA do not include retained catch from 1995 through 2000 (see Table 2b of this preamble) because the reduction in trawl catch concurrent with implementation of the Steller sea lion protection measures in the Central GOA was less than in the Western GOA.

TABLE 2A—AVERAGE PERCENT OF THE TOTAL CATCH OF PACIFIC COD OVER VARIOUS YEARS IN THE WESTERN GOA BY EACH SECTOR, EXCEPT JIG

Western GOA	Hook-and-line C/P (%)	Hook-and-line CV (%)	Pot C/P (%)	Pot CV (%)	Trawl C/P (%)	Trawl CV (%)
1995–2005, best 7 years*	19.8	0.5	2.2	28.0	2.5	46.9
2000–2006, best 5 years	21.8	0.6	2.3	40.7	2.6	32.0
2002–2007, best 5 years	22.7	1.2	1.6	46.0	2.4	26.1
2002–2008, best 5 years	21.8	1.7	1.5	44.5	2.4	28.1
Each sector's best option	18.6	1.4	1.9	37.6	2.1	38.4
Average of all options	21.5	1.0	1.9	39.8	2.5	33.3

*Contains rounding errors ±0.1%

TABLE 2B—AVERAGE PERCENT OF THE TOTAL CATCH OF PACIFIC COD OVER VARIOUS YEARS IN THE CENTRAL GOA BY EACH SECTOR, EXCEPT JIG

Central GOA	Hook-and-line C/P (%)	Hook-and-line CV ≥50 (%)	Hook-and-line CV <50 (%)	Pot C/P (%)	Pot CV (%)	Trawl C/P (%)	Trawl CV (%)
2000–2006, best 5 years*	4.2	14.6	6.2	1.0	25.3	4.4	44.2
2000–2006, best 3 years*	4.7	14.0	5.6	1.4	28.0	4.4	42.0
2002–2007, best 5 years*	5.2	15.5	7.1	0.4	25.9	3.5	42.4
2002–2007, best 3 years*	4.9	14.7	6.9	0.5	28.2	3.3	41.4
2000–2008, best 5 years	5.5	14.6	7.8	0.3	25.8	3.3	42.7
2000–2008, best 3 years*	5.2	14.7	6.9	0.5	28.1	3.3	41.4
Each sector's best option	5.1	14.6	6.7	1.3	26.5	4.2	41.6
Average of all options	4.9	14.7	6.7	0.7	26.9	3.7	42.4

*Contains rounding errors ±0.1%

For the purposes of setting sector allocations for the non-jig sectors, the Council recommended the highest of all averages across the various options to reduce disparities among the options. The Council and NMFS noted that this would result in differences depending on the years selected as the highest, especially after the catch histories are scaled among sectors to allocate 100 percent of the TAC. Using each sector's best percentage increases the percentage allocation to sectors with a best option that is substantially higher than that sector's average option. Furthermore, this recommendation would decrease TAC allocations to sectors with a best option closer to that sector's average option. In some cases this would result in an allocation that is less than each of the respective sector's average catch history. At final action the Council recommended further adjustments to these historical catch histories to address these discrepancies. Adjustments to the catch histories are explained in more detail in section V of this preamble.

V. Allocation of Total Allowable Catch (TAC)

Under Amendment 83, NMFS would remove from regulations the inshore/offshore allocations of TAC for Pacific cod in the Western and Central GOA and instead assign each sector an allocation of Pacific cod TAC to support each sector's directed and incidental catch needs. With the exception of the jig sector, the Council's recommended TAC allocations are based on each sector's best option from four catch history options in the Western GOA and six options in the Central GOA (Tables 2a and 2b of this preamble). The catch histories were then scaled so that the proposed allocations sum to 100 percent. The Council further apportioned the annual catch histories by season to reflect the seasonal fishing behaviors of each sector. If the amendment is approved, NMFS would seasonally apportion sector allocations between the A and B seasons, based on each sector's seasonal catch history during the qualifying years, while maintaining the aggregate 60 percent/40

percent apportionment of the TAC in each regulatory area.

In the Western GOA regulatory area these historical values were adjusted to incorporate changes in fishing behavior since the implementation of Steller sea lion protection measures. In the Western GOA allocations to the pot CV and C/P, hook-and-line C/P, and trawl C/P sectors' allocations were adjusted to account for differences between using each sector's best option and the average retained catch across the four options in the Western GOA. Specifically, the seasonal apportionments of the Western GOA trawl CV and pot CV and C/P allocations were shifted to allow a great portion of the trawl allocation be assigned during the A season because there is little historic trawl effort during the B season. These differences are described in detail in section 2.3.8 of the EA/RIR/IRFA for this action (see **ADDRESSES**).

In the Central GOA, the trawl CV sector's Pacific cod allocation would continue to support the incidental catch in the directed rockfish fishery. Currently, trawl CVs that also participate in the Rockfish program are allocated 2.09 percent of the Central GOA regulatory area Pacific cod TAC to support incidental catch of Pacific cod by cooperatives in the rockfish fisheries. This action would not change their portion of the Pacific cod allocation; however, the incidental catch of Pacific cod by trawl CVs targeting rockfish will be deducted from the Central GOA trawl CV B season TAC allocation, as calculated in part B step 4 below.

A. Allocations to the Jig Sector

In general, the Council's proposed allocations of Pacific cod are intended to formally institutionalize the historical pattern of the Pacific cod fisheries prosecution; however, this action would establish allocations to the jig sector in the Western and Central GOA regulatory areas that are greater than the average catch history. Typically, retained catch from the jig sector in the Western and Central GOA regulatory areas was less than one percent of the TAC from 1995 through 2010. Under this action, NMFS would increase the amount of Pacific cod TAC allocated annually to jig vessels by establishing an allocation to the jig sector that is greater than the historic catch. If approved, NMFS would allocate the jig sector 1.5 percent of the Western GOA and 1 percent of the Central GOA Pacific cod TAC.

This action is intended to expand entry-level opportunities in the GOA Pacific cod fishery by providing increased initial allocations to the jig sector and through provisions to accommodate increased harvest by this sector. The Council recommended a stair-step provision to increase the jig allocation by 1 percent following any year in which 90 percent or more of the Federal jig allocation in a regulatory area is harvested. Amendment 83 contains provisions that would increase the percentage allocated to the jig sectors up to 6 percent of the TAC in the Western and Central GOA. Although the Pacific cod allocations to the jig sectors would not decrease below its initial level of 1 percent of the TAC, the jig allocation in each regulatory area would be stepped down in 1 percent annual increments, if less than 90 percent of the allocation prior to the most recent stair-step increase were not harvested during two consecutive years following the stair-step increase, as portrayed in Table 3 of this preamble.

TABLE 3—POSSIBLE HARVEST SCENARIOS AFFECTING THE ANNUAL JIG SECTOR ALLOCATION OF PACIFIC COD IN THE WESTERN AND CENTRAL GULF OF ALASKA REGULATORY AREAS

If the previous year's jig sector allocation in the Western or Central GOA regulatory areas—	Then, in the following year, the jig sector's portion of the Federal Pacific cod TAC would—
Was less than 6 percent of the total Federal Pacific cod TAC in that area and 90 percent, or greater, of the TAC was harvested in a given year.	Increase by one percent.
Was 6 percent of the total Federal Pacific cod TAC in that area and 90 percent, or greater, of the TAC was harvested in a given year.	Not change.
Was equal to or less than 6 percent of the total Federal Pacific cod TAC in that area and less than 90 percent of the TAC allocated prior to the most recent stair-step increase was harvested in that year.	Not change.
Was equal to or less than 6 percent of the total Federal Pacific cod TAC in that area and less than 90 percent of the TAC allocated prior to the most recent stair-step increase was harvested for a total of two consecutive years.	Decrease by one percent.
Was equal to one percent in the Central GOA or 1.5 percent in the Western GOA and less than 90 percent of the TAC was harvested in the last two consecutive years.	Not change.

Amendment 83 is intended to ensure that changes to the portion of Pacific cod available to the jig sector do not alter the historic percentages assigned to other non-jig sectors. If implemented, NMFS would deduct the jig allocations from the total Pacific cod TAC in the Western GOA and Central GOA before assigning TAC to non-jig sectors. The allocations to the non-jig sectors would be calculated from a reduced amount of TAC in each regulatory area. The Council recommended this allocation priority for the jig sector to promote stability in the Pacific cod fisheries by retaining the relative value of the non-jig sector allocations at historic levels. An example of this calculation is provided in part A step 1 of section V of this preamble.

The Council included two sets of management measures for the jig allocation when it took final action on Amendment 83. To implement the first set of management measures, NMFS proposes that any portion of the parallel/Federal waters jig allocation be apportioned 60 percent and 40 percent between the A and B seasons, respectively. NMFS would amend the regulations at § 679.23(d)(3) to modify the opening and closing dates of the parallel/Federal jig seasons to correspond with the GHL seasons. Under component 5 the Council recommended that the Federal jig sector allocation be divided between an A season, opening on January 1 and closing when the A season allocation is reached or on March 15, whichever occurs first, and a Federal B season which would open on June 10 or after the State GHL season closes, or whichever happens first.

NMFS proposes Federal A and B seasons for vessels using jig gear that are consistent with the Council's intent to increase opportunities for the jig sector to access Pacific cod; however, this action would not implement a mandatory March 15 limit for the Federal A season. NMFS will continue to work with the State of Alaska Board of Fisheries Joint Protocol Committee to

create a seamless Federal and State GHL jig fishery that would increase access to Federal waters for vessels using jig gear. An analysis of the best available information has revealed several complications—detailed below—associated with implementing the recommended March 15 closure date. The March 15 closure date was recommend by the Council, in part, after reviewing the historic Western and Central GOA Federal A season closure dates; however, the recommended season does not account for the different regulatory triggers which open the State waters GHL fishery in each of the State management areas.

The Council contemplated reciprocal regulatory action by the State of Alaska Board of Fisheries (BOF) to synchronize the State and Federal season; however the BOF has yet to recommend similar action to establish a seamless jig fishery season. The BOF is expected to take action on Pacific cod agenda items during its October 2011 meeting. NMFS does not presume to know what date, if any, the BOF might set for each State management area. Therefore, NMFS is proposing to not implement the March 15 closure date. NMFS could revise the final rule to implement Amendment 83 to establish a March 15 closure date for the Federal A season jig fishery if the BOF takes action to specifically establish that closure date.

NMFS interprets the March 15 closure date for the A season Federal TAC season as guidance to the BOF for the ongoing discussion with the Joint Protocol Committee. To meet Council intent, it is not tenable to implement the March 15 closure date, as recommended by the Council. Therefore, if this rule is implemented NMFS would not close the A season fishery on March 15, but would instead close the fishery when the TAC has been harvested or on June 10, whichever occurs first. This action is intended to provide a seamless Federal jig fishery while providing the State of Alaska BOF the flexibility necessary to open and close the GHL and parallel fisheries in each regulatory area as they see fit. Harvest from the parallel/Federal fishery would be deducted from the TAC and harvest from the state GHL fishery would be deducted from the GHL.

Moreover, the language of the Council's motion is not clear in regards to opening the Federal B season. The motion mentions only one GHL season closure as the trigger for opening the B season. However there are different GHL closure dates for each of the State management areas depending on the rate of harvest and overall amount of GHL available to jig gear. In some areas the GHL season is not closed and GHL is left unharvested annually (*e.g.,* Chignik Management Area). In order to implement the Council's motion, NMFS would have to rely on a specific action of the State—closure of a GHL fishery, to begin the B season fishery. Due to the ambiguous definition of ''a GHL fishery,'' NMFS cannot precisely determine which closure of which GHL fishery would be used to establish the opening date of the Federal B season fishery. This lack of specificity is particularly problematic in the Central GOA. Four State managed GHL fisheries occur within the Central GOA management area—Prince William Sound, Cook Inlet, Kodiak, and Chignik. The Council did not specify if one, two, three, or all four State GHL fisheries would need to be closed by the State before the Federal B season jig fishery could open. Due to this lack of specificity, NMFS proposes to retain the current jig B season opening date of June 10. The Federal B season jig allocation would remain open from June 10 until the jig TAC is reached, or December 31, whichever occurs first.

The jig A season would close on or before June 10 and the B season would open June 10. In years where the A season jig TAC is not fully harvested prior to June 10, the latest closing date for the A season, NMFS inseason management would assess the amount of A season TAC remaining and the ability of the fleet to harvest that TAC. Any unused A season TAC allocated to a sector under this action could be reapportioned to that sector for the B season. This action is necessary to provide jig vessels additional opportunity to safely harvest their unharvested A season Pacific cod TAC allocations in the B season. For non-jig sectors, the B season would open on September 1.

NMFS notes that the proposed concurrent management of Federal TAC and State GHL seasons complicates catch accounting for State and Federal managers. If this action is approved, the assignment of catch to the TAC or GHL fishery will become more complex due to the overlapping season. NMFS notes that it may be necessary for increased coordination and outreach among State fishery managers and the jig fleet to ensure accurate accounting of landings to the State or Federal statistical area of harvest.

The BOF has requested proposals to change the Pacific cod regulations for the Prince William Sound Area (Registration Area E), Cook Inlet Area (Registration Area H), Kodiak Area (Registration Area K), Chignik Area (Registration Area L), and South Alaska Peninsula Area (Registration Area M). Based on past experience in similar actions, NMFS expects that the BOF will act to address changes to the State waters Pacific cod fisheries at their October 2011 meeting.

The Council also recommended as part of Amendment 83 a second set of management measures dependent on BOF action that are not addressed in this proposed rule. The Council is considering alternative measures for managing the Federal jig fisheries consistent with the Council's stated goals and in coordination with the BOF Joint Protocol Committee.

1. Example of TAC Allocations to the Jig Sector

The following section provides an example of how the Pacific cod TAC allocations to the jig sector would be calculated if Amendment 83 is implemented. The figures used in this example are based on the ABCs and TACs established for 2011 as part of the final harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011). The estimates used in these examples are subject to future regulatory change before the final harvest specifications are published in the **Federal Register** for the 2012 Pacific cod fishing year.

Step 1: Subtract GHL for the State waters fisheries from the ABC to calculate TAC. NMFS would establish the GOA overfishing level (OFL), and the Western, Central, and Eastern ABCs for Pacific cod in the GOA according to the methodology described in part C of section I of this preamble. Table 4 of this preamble displays the allocation of the ABCs to the Western, Central, and Eastern GOA regulatory areas. NMFS would set each GOA Pacific cod TAC less than or equal to the regulatory area ABC. The Pacific cod TACs in the GOA would be calculated to accommodate the State's GHLs for Pacific cod. As detailed in part C of section II of this proposed rule, the TAC would be reduced up to 25 percent of the ABC in each regulatory area to account for harvest in the State waters fisheries. After accounting for the GHL, NMFS would calculate TAC for each regulatory area (ABC − GHL = TAC as shown in Table 4). The calculations used this example are approximate because the Council could choose to set the TAC less than the ABC–GHL.

TABLE 4—EXAMPLE CALCULATIONS FOR DETERMINING THE AMOUNT OF GOA PACIFIC COD ABC FOR HARVEST IN THE STATE WATERS FISHERIES GHL AND EXAMPLE TAC ALLOCATIONS

GOA Regulatory Area (OFL= 102,600 mt)	ABC mt	Percent ABC deducted to account for GHL	GHL subtracted from ABC mt	Percent ABC remaining for TAC	TAC = (ABC − GHL) mt
WGOA	30,380	25	7,595	75	22,785
CGOA	53,816	25	13,454	75	40,362
EGOA	2,604	25	651	75	1,953

Step 2: Calculate TAC allocation to the jig sector. NMFS would need to calculate the allocation of Pacific cod TAC to the jig sector first and then apportion the remaining TAC among the non-jig sectors in the Western and Central GOA, as described in detail in part B of section V of this preamble. Table 5 displays estimates of the jig sector TAC allocation for Pacific cod by regulatory area and season, assuming the recommended initial jig sector allocations are approved for the Western and Central GOA at 1.5 percent and 1 percent, respectively. Further description of the stair-step provisions for increasing and decreasing the jig sector's portion of the TAC can be found earlier in this section. After assigning TACs to each regulatory area, NMFS would calculate the jig sector allocation (TAC X percent jig allocation = annual jig TAC) in the Western and Central GOA. This proposed action does not allocate TAC by season or sector in the Eastern GOA for reasons detailed in part B of section IV of this preamble. Allocations to the Eastern GOA are provided in this example to include a complete picture of the GOA Pacific cod fishery.

TABLE 5—EXAMPLE OF PACIFIC COD TAC ALLOCATIONS TO THE JIG SECTOR IN THE WESTERN AND CENTRAL GOA

Regulatory area	TAC mt	Percent Total TAC	Jig Sector Percent TAC	Jig Sector TAC mt	Non-jig Sectors Percent TAC	Non-jig Sectors TAC mt
WGOA	22,785	35.0	1.5	342	98.5	22,443
CGOA	40,362	62.0	1.0	404	99	39,958
EGOA	1,953	3.0	0.0	0	100	1,953
Total	65,100	100	N/A	746	N/A	64,254

B. Seasonal Sector Allocations by Area to Non-Jig Sector Participants

The Council recommended seasonal allocations of Pacific cod to each sector as part of Amendment 83. The values for each sector, except jig, in the Western GOA and Central GOA, as recommended by the Council are presented in Table 6 below.

TABLE 6—RECOMMENDED PACIFIC COD SECTOR ALLOCATIONS AS APPROVED BY THE NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL DURING FINAL ACTION ON AMENDMENT 83

Sector	Percentage annual allocation	Compare to 60/40		A season allocation	B season allocation	A season allocation	B season allocation
		Percentage A season	Percentage B season	Percentage annual allocation	Percentage annual allocation	Percentage seasonal allocation	Percentage seasonal allocation
Western GOA sector allocations after the jig allocation is subtracted from the TAC							
HAL CV	1.4	47.2	52.8	0.7	0.7	1.1	1.8
HAL C/P	19.8	55.2	44.8	10.9	8.9	18.2	22.2
Trawl CV	38.4	72.3	27.7	27.7	10.7	46.2	26.6
Trawl C/P	2.4	37.9	62.1	0.9	1.5	1.5	3.7
Pot CV/C/P	38.0	52.0	48.0	19.8	18.2	32.9	45.6
Total	100.0	.....	.....	60.0	40.0	*100.0	*100.0
Central GOA sector allocations after the jig allocation is subtracted from the TAC							
HAL CV <50	14.6	63.9	36.1	9.3	5.3	15.5	13.2
HAL CV ≥50	6.7	84.0	16.0	5.6	1.1	9.4	2.7
HAL C/P	5.1	80.3	19.7	4.1	1.0	6.8	2.5
Trawl CV	41.6	50.8	49.2	21.1	20.5	35.2	51.2
Trawl C/P	4.2	48.8	51.2	2.0	2.2	3.4	5.4
Pot CV/C/P	27.8	63.9	36.1	17.8	10.0	29.7	25.1

TABLE 6—RECOMMENDED PACIFIC COD SECTOR ALLOCATIONS AS APPROVED BY THE NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL DURING FINAL ACTION ON AMENDMENT 83—Continued

Sector	Percentage annual allocation	Compare to 60/40		A season allocation	B season allocation	A season allocation	B season allocation
		Percentage A season	Percentage B season	Percentage annual allocation	Percentage annual allocation	Percentage seasonal allocation	Percentage seasonal allocation
Total	100.0			*60.0	*40.0	100.0	*100.0

*Due to rounding, percentages for each sector might not sum to totals.

NMFS proposes seasonal allocations to non-jig sectors that differ slightly from the Council's motion. The Council's motion for Amendment 83 recommended seasonal and sector allocations that contain truncation or rounding errors, which result in total seasonal allocation percentages that, in some cases, do not equal 100 percent annually (see Table 6 of this preamble). The Council noted these discrepancies at final action but did not offer guidance on revising the values. NMFS proposes to remove these errors in order to implement the Council's objectives for promoting stability and predictability in the GOA Pacific cod fishery. If implemented NMFS would (1) Revise the percentages allocated to each sector in the Central GOA by expanding the value to the hundred-thousandth place, (2) calculate the difference between the seasonal percentages in Table 7 and the 60 percent and 40 percent intended as the seasonal distribution of fishing effort, and then (3) equitably apportion the difference as a pro rata amount from each sector.

Under the Council's recommended allocations, the Central GOA would be allocated 59.9 percent and 40.1 percent of the annual TAC to the A season and B season, respectively. If implemented, NMFS would modify the recommended sector allocations, by shifting 0.1 percent of the annual TAC from the B season to the A season. As a result, NMFS proposes reducing each sector's B season allocation by their pro rata portion of 0.1 percent and adding to each sector's A season allocation their pro rata share of 0.1 percent. The resulting percentage allocations sum to 60 percent and 40 percent in the A and B seasons, respectively, as displayed in Table 7 of this preamble. This approach would provide an equitable redistribution of the seasonal TAC allocation to each sector and would result in a minimal change relative to the Council's motion.

TABLE 7—EXAMPLE COMPARISON OF THE COUNCIL'S PROPOSED ALLOCATIONS AND THE CORRECTED VALUES PROPOSED BY NMFS UNDER THIS ACTION

Sector	Percentage of A season allocations			Percentage of B season allocations		
	Council's motion	Proposed	Difference	Council's motion	Proposed	Difference
Central GOA annual TAC allocations to the A and B seasons after the jig allocation is subtracted from the TAC						
HAL CV <50	9.30000	9.31552	0.01552	5.3000	5.28678	0.01322
HAL CV ≥50	5.60000	5.60935	0.00935	1.1000	1.09726	0.00274
HAL C/P	4.10000	4.10684	0.00684	1.0000	0.99751	0.00249
Trawl CV	21.10000	21.13523	0.03523	20.5000	20.44888	0.05112
Trawl C/P	2.00000	2.00334	0.00334	2.2000	2.19451	0.00549
Pot CV/C/P	17.80000	17.82972	0.02972	10.0000	9.97506	0.02494
Total	59.90000	60.00000	0.10000	40.1000	40.00000	0.10000

1. Example of Allocations to Fishery Participants

Step 1: Assign TAC to Western and Central GOA regulatory areas. If Amendment 83 is approved, NMFS would allocate TAC to non-jig sectors in the Western and Central GOA, as specified in part B of section V of this preamble. First, NMFS would need to calculate the amount of TAC remaining after the deductions for the jig sector (Total TAC − jig TAC = non-jig TAC). The remaining TAC will be allocated to each non-jig sector as calculated below. In this example, the total TAC amounts (Table 4) are reduced by 342 mt in the Western GOA and 404 mt in the Central GOA (Table 5) to account for the jig sector's allocation. The remaining TAC will be further allocated to each non-jig sector, as calculated in Step 2 below.

Step 2: Assign TAC to sectors by season in Western and Central GOA. NMFS would allocate the remaining TAC to each sector as described in parts A and B of section V of this preamble. NMFS would need to apportion the remaining TAC (Table 5) among the non-jig sectors at the seasonal percentages proposed by NMFS.

Although the length and timing of seasons often differs among sectors, NMFS would calculate the seasonal apportionments of the TAC using the same methodology. NMFS would multiply each sector's seasonal portion of the annual TAC by the amount of TAC allocated to non-jig sectors in the Western and Central GOA regulatory areas. NMFS would not allocate the Eastern GOA TAC among sectors or season; however, NMFS would continue to apportion the Eastern GOA TAC between the inshore (90 percent of the TAC) and the offshore (10 percent) components of the fishery, as displayed in Table 8 below.

TABLE 8—EXAMPLE OF THE ADJUSTED PACIFIC COD ALLOCATIONS IN THE GOA BY REGULATORY AREA, SECTOR AND SEASON, AND INSHORE/OFFSHORE AS PROPOSED UNDER AMENDMENT 83

Regulatory area and sector	Seasonal allowances			
	A Season (60%)		B Season (40%)	
	Percent of annual Non-Jig TAC	Total mt	Percent of Annual Non-Jig TAC	Total mt
Western GOA:				
Jig	N/A	205	N/A	137
Hook-and-line CV	0.70	157	0.70	157
Hook-and-line C/P	10.90	2,446	8.90	1,997
Trawl CV	27.70	6,217	10.70	2,401
Trawl C/P	0.90	202	1.50	337
All Pot CV and C/P	19.80	4,444	18.20	4,085
Total	60.00	13,671	40.00	9,114
Central GOA:				
Jig	N/A	242	N/A	162
Hook-and-line <50 CV	9.32	3,722	5.29	2,112
Hook-and-line ≥50 CV	5.61	2,241	1.10	438
Hook-and-line C/P	4.11	1,641	1.00	399
Trawl CV	21.13	8,445	20.45	8,171
Trawl C/P	2.00	801	2.19	877
All Pot CV and C/P	17.83	7,125	9.97	3,986
Total	60.00	24,217	40.00	16,145
Eastern GOA *	Component Allocation			
TAC mt	Inshore mt (90%)	Offshore mt (10%)		
1,953	1,758	195		

* Although this action would not change the current inshore/offshore allocation in the Eastern GOA, the estimated TAC is included to provide a complete example of Pacific cod allocations in the GOA should this action be approved.

Step 3: Apportion Central GOA trawl CV B season allocation to the rockfish fishery. In the Central GOA regulatory area, CVs participating in the Rockfish Program (as defined at 50 CFR 679.2) would be allocated a portion of the B season trawl CV allocation. This TAC would be allocated to rockfish participants as cooperative quota. Each year NMFS would calculate the incidental catch of Pacific cod required for the Rockfish Program by multiplying the amount of Central GOA trawl CV TAC by 2.09 percent. Using data calculated from the 2011 example in Table 8, NMFS estimates that 171 mt of Pacific cod would be deducted from the Central GOA B season TAC (8,171 mt × 2.09% = 171 mt).

C. Reallocation of Unharvested Pacific Cod Among Sectors

NMFS anticipates, based on experience in the BSAI, that if GOA Pacific cod is allocated to various sectors, one or more sectors would be unable to harvest their annual allocation of the Pacific cod TAC. Thus, to provide an opportunity for the full harvest of the GOA Pacific cod TAC, NMFS would reallocate Pacific cod TAC that is projected to be unharvested to other sectors.

The priority reallocation of unharvested Pacific cod to CVs is intended to promote stability in coastal communities that are dependent on the Pacific cod fishery and have traditionally participated in the fishery as part of the inshore sector. During the last fishing season of the year, *i.e.*, B season, NMFS would consider if sectors would be unlikely to use their remaining GOA Pacific cod allocation. Any portion of a CV, C/P, or jig allocation that NMFS determines will remain unharvested during the remainder of the fishing year would become available to other sectors for harvest as soon as practicable. NMFS would reallocate these projected unused allocations to the CV sectors first, and then to all sectors, taking into account the capability of a sector, as determined by NMFS' Alaska Regional Administrator, to harvest the remaining Pacific cod TAC. However, NMFS may reallocate the projected unused allocations to the combined pot CV and C/P sectors first, after consideration the CV sectors first, and then the remaining sector's capability to fully harvest the remaining TAC.

VI. Prohibited Species Catch (PSC) Allocations

PSC regulations pertain to certain species caught in the process of fishing for groundfish that must be accounted for but cannot be retained, except for halibut and salmon retained under the donation program at § 679.26. Regulations at § 679.21 establish PSC limits in the GOA groundfish fisheries for Pacific halibut. These regulations include separate Pacific halibut PSC limits for hook-and-line and trawl gear at § 679.21(d)(4). Attainment of a PSC limit results in directed fishing for Pacific cod being prohibited, even if the seasonal Pacific cod apportionment has not been fully harvested. Trawl vessels, and, to a lesser extent, hook-and-line vessels, compete to catch Pacific cod at the highest possible rate during the B season, with the knowledge that halibut PSC limits may close the Pacific cod B season at any time. Halibut PSC limits often constrain the length of the B season for these sectors. During years

when the halibut PSC limit has not limited participation by trawl and hook-and-line vessels, the B season TACs have been fully harvested.

A. General Description

NMFS proposes to apportion the non-demersal shelf rockfish fishery portion of the hook-and-line halibut PSC limit between operation types as part of the harvest specifications process. Hook-and-line sector allotments of halibut PSC limits are intended to protect the historical B season catches during these years, but would not be expected to directly impact halibut bycatch. The proposed apportionments of halibut PSC limits are intended to increase the ability of each hook-and-line sector to plan their fishing operations, as described in further detail in section 2.2.8 of the EA/RIR/IRFA for this action (see **ADDRESSES**).

Apportioning the halibut PSC limit to hook-and-line CV and C/P sectors would prevent one sector from pre-empting the other sector's fishing season by using a greater than expected proportion of the hook-and-line halibut PSC limit. These PSC apportionments also would apply to hook-and-line CVs and C/Ps operating in the Eastern GOA; however, the halibut PSC limit apportionments would only be derived from Pacific cod TAC allocations to the Western and Central GOA. Annually, NMFS would calculate the halibut PSC limit apportionments for the entire GOA to hook-and-line CVs and C/Ps.

This action would not affect halibut PSC limits apportioned to trawl vessels; however, the Council is considering action to further modify halibut PSC limits in the GOA during their October 2011 meeting.

1. Example of PSC Calculations

The following section provides an example of the calculations necessary to allocate the halibut PSC limit between the hook-and-line CV and C/P sectors, as proposed by this action. The figures used in this example are based on the 2011 PSC limits and 2011 Pacific cod ABC area apportionments established as part of the final harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011).

Step 1: Calculate the total percent allocations of Pacific Cod to the respective hook-and-line sectors for the Western and Central GOA. The Council recommended that NMFS allocate the GOA hook-and-line halibut PSC limit between the C/P and CV sectors in proportion to the total Western and Central GOA Pacific cod percent allocations to each hook-and-line sector. This is accomplished by summing the respective hook-and-line percent sector allocations for each operation type for the Western and Central GOA, as shown in Table 9. In the Central GOA this requires the additional step of combining the TAC allocations of both hook-and-line CV sectors (< 50 ft (15.2 m) LOA and ≥50 ft (15.2 m) LOA). Although the halibut PSC limits proposed by this action apply to the entire GOA, including the Eastern GOA regulatory area, the apportionment of the hook-and-line PSC limits would be calculated solely based on the hook-and-line allocations of the Western and Central GOA TACs as described in Table 9 of this preamble.

Step 2: Scale the total hook-and-line CV and C/P Pacific cod percent allocations to reflect the relative size of the Pacific cod TAC area apportionments. Annually, NMFS would need to scale the total hook-and-line CV and C/P percent sector allocations in proportion to the relative size of the Pacific cod TAC area apportionments, because the Pacific cod TAC allocations to each regulatory area may change depending on the stock status in each area, as determined by the annual surveys. NMFS would then apportion the GOA hook-and-line halibut PSC limit to the hook-and-line sectors in proportion to the scaled hook-and-line sector allocations.

TABLE 9—EXAMPLE FOR CALCULATING THE RELATIVE AMOUNT OF TAC ALLOCATED TO THE WESTERN AND CENTRAL GOA AND FOR CALCULATING THE TOTAL HOOK-AND-LINE CV AND TOTAL HOOK-AND-LINE C/P PERCENTAGE ALLOCATION IN EACH REGULATORY AREA

Combined sectors	Percent of WGOA TAC (Scaled)	Percent of CGOA TAC (Scaled)	Sum of percent
HAL C/P	7.1	3.3	10.4
HAL CV	0.5	13.6	14.1

Step 3: Apportion total hook-and-line PSC limits between hook-and-line CVs and C/Ps. The Council recommended that NMFS maintain the 2011 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries. Ten mt of the hook-and-line PSC limit is further allocated to the demersal shelf rockfish fishery, leaving 290 mt to be allocated between the hook-and-line CVs and C/Ps. To calculate the annual hook-and-line allocations of the PSC limit, NMFS would multiply the scaled annual allocations of TAC by the 290 mt non-demersal shelf rockfish hook-and-line PSC limit. In the 2011 example, NMFS calculated that hook-and-line CV and hook-and-line C/P sectors would receive 167 mt and 123 mt, respectively, as shown in Table 10 of this preamble.

TABLE 10—HOOK-AND-LINE (HAL) HALIBUT PROHIBITED SPECIES CATCH LIMITS BY OPERATIONAL TYPE FOR THE GULF OF ALASKA GROUNDFISH FISHERIES

Combined sectors	Sum of percent	Relative percent between C/P and CV	PSC limit mt
HAL C/P	10.4	42.4	123
HAL CV	14.1	57.6	167

Step 4: Project and reallocate unused PSC limits. NMFS would reallocate PSC projected to remain unused by a sector at the end of the fishing year to the other hook-and-line sector. No later than November 1, NMFS would calculate the amount of unused halibut PSC by one of the hook-and-line sectors for the remainder of the year. The projected amount of halibut PSC would be made available to the other hook-and-line sector for the remainder of that fishing year.

VII. Pacific Cod Sideboard Limits in the GOA

NMFS would recalculate several Pacific cod sideboards for the Western and Central GOA regulatory areas. The Council recommended sideboard allocations for the non-exempt AFA CVs and non-AFA crab vessels that would supersede the inshore/offshore processing sideboards established under the AFA and Crab Rationalization Program. These sideboards would be calculated annually as part of the harvest specification process. Non-exempt AFA CV sideboards would be recalculated by combining the inshore and offshore sideboards into a single account in the respective Western and Central GOA regulatory areas. In recent years, offshore sideboard allocations have not been fully harvested while inshore allocations are typically fully utilized. By combining the two sideboard categories into a single sideboard for each regulatory area, the Council's recommendation was intended to make the offshore sideboard allocation available to the CVs historically associated with the inshore processing components (See Table 11 of this preamble).

Although this combination would simplify the catch accounting of sideboard allocations, the Council declined to recommend similar sideboard allocations for the non-AFA crab vessel fishery because the inshore and offshore sideboards are typically fully harvested. A combination of the inshore and offshore sideboards is likely to result in increased competition and decrease stability in this fishery. Instead, this action would recalculate non-AFA crab vessel sideboards as separate C/P and CV sideboards for each gear type. The Council and NMFS recognize that the proposed non-AFA crab vessel sideboards could result in CV trawl, hook-and-line, and jig allocations that are too small to support directed fisheries for Pacific cod in these regulatory areas.

TABLE 11—EXAMPLE CALCULATION OF THE GOA PACIFIC COD SIDEBOARDS FOR AFA CVS AND NON-AFA CRAB VESSELS RECALCULATED BY COMBINING INSHORE AND OFFSHORE SIDEBOARDS INTO A SINGLE SIDEBOARD PERCENTAGE FOR EACH REGULATORY AREA; NON-AFA CRAB VESSEL SIDEBOARDS ALSO CALCULATED BY GEAR AND OPERATION TYPE

Regulatory area	% Sideboard of TAC	2011 Estimated sideboard mt	
		A season	B season
AFA CV Sideboards			
Western GOA	13.31	1,820	1,213
Central GOA	6.92	1,676	1,117
Non-AFA Crab Sideboards			
Western GOA:			
Hook-and-line CV	0.03	4	3
Pot CV	8.16	1,116	744
Trawl CV	0.60	82	55
Hook-and-line C/P	0.15	21	14
Pot C/P	0.64	87	58
Total C/P	0.79	108	72
Total CV	8.80	1,202	802
Total	9.58	1,310	874
Central GOA:			
Trawl CV	0.10	24	16
Hook-and-line CV	0.01	2	2
Jig CV	*	*	*
Pot CV	3.54	857	572
Hook-and-line C/P	*	*	*
Pot C/P	0.92	223	149
Total C/P	*	*	*
Total CV	*	*	*
Total	4.64	1124	749

* These data are considered confidential under the MSA and other Federal laws and are not included in the table.

In October 2008, the Council recommended Amendment 34 to the FMP. NMFS published the notice of availability for Amendment 34 on March 14, 2011 (76 FR 13593). NMFS published the proposed rule to implement Amendment 34 on March 28, 2011 (76 FR 17088). If approved, this action would amend the Crab Rationalization Program to exempt additional fishery participants from GOA Pacific cod sideboard limits.

Under the Program, five vessels and five LLP licenses are exempt from GOA Pacific cod sideboard limits established for the non-AFA Crab vessels. These vessels and groundfish LLP licenses qualified for the exemption in part because of their historic dependence on the GOA Pacific cod fishery. Therefore under current regulations, these vessels are able to participate in the GOA Pacific cod fishery unrestricted by the sideboard limit. The exempt non-AFA crab vessels do not have to stop fishing when the GOA Pacific cod sideboard limit is reached and may continue to fish as long as directed fishing for GOA Pacific cod is open. Although Amendment 34 would exempt three additional non-AFA crab vessels from the GOA Pacific cod sideboard limits, that action should not affect the modifications to the sideboard limits proposed here, except to reduce the number of vessels fishing under the sideboard restrictions.

VIII. Community Protection Measures

In 1992, the inshore/offshore processing allocations were established under Amendment 23 to the FMP (57 FR 23321; June 3, 1992) and were intended to prevent one sector from processing a larger portion of the harvest than that sector has historically processed. The inshore/offshore processing allocations enabled vessels and facilities operators to better plan their annual harvest and processing activity. These provisions protected the inshore processing component from competition by the offshore fleet. If approved, Amendment 83 would supersede the inshore/offshore allocations with sector allocations for the Western and Central GOA.

A. Proposed Community Protection Provisions

The Council recognized the potential for a shift in the processing and delivery patterns in the GOA Pacific cod fishery and included community protection provisions as part of Amendment 83. If implemented, this action would promote stability in the distribution of catch among the processing sectors by limiting the amount of Pacific cod processed by vessel currently classified as offshore processors: motherships, C/Ps receiving deliveries over the side, and any floating processor that does not meet the definition of a stationary floating processor in § 679.2. This action would retain restrictions established under the inshore/offshore system to prohibit stationary floating processors from engaging in mothership activity in more than one geographic location in the GOA, or operating as a C/P in the GOA during the same calendar year. In addition, this proposed rule would establish various processing caps as part of the new sector allocations in the Western and Central GOA. Without these restrictions and processing caps, owners and operators of vessels receiving deliveries of Pacific cod could shift historic processing delivery patterns away from communities historically depended on processing activity. This proposed action is intended to retain the community participation in the processing of Pacific cod established by the inshore/offshore regulations.

If implemented, this action would establish provisions to limit the amount of Pacific cod processed by motherships and other vessels receiving deliveries of Pacific cod from other vessels for processing in the GOA. Under this action, vessels would be prohibited from receiving deliveries of groundfish in the Central GOA where there has been no mothership activity since 2000. In the Western GOA, NMFS would prohibit motherships from processing a greater portion of Pacific cod than during the inshore/offshore management program. If implemented, vessels (*e.g.* processors that do not meet the definition of a stationary floating processor) that receive deliveries of groundfish for processing would be restricted to processing two percent of the Western GOA Pacific cod TAC. Although this action does not establish a mothership TAC allocation as part of this action, NMFS would close deliveries to mothership vessels in the Western GOA when the annual two percent processing cap is predicted to be reached. Pacific cod harvested as direct or indirect catch and delivered to another vessel for processing would be debited against the harvesting vessel's operational type and or gear type allocation, as described in section IX of this preamble.

NMFS also propose separate processing caps for mothership vessels operating within specific communities within the Western and Central GOA. This action is intended to provide CV operators with more options for making deliveries and to provide incentives for additional processors to operate within the marine municipal boundaries of specific coastal communities in the Western and Central GOA that qualify under the community quota entity (CQE) program.

B. Description of Community Quota Entity (CQE) Communities

The Council established the CQE program to ensure specified coastal communities have access to and sustained participation in commercial fisheries. To participate in the CQE program, each community must meet the following criteria—fewer than 1,500 residents; documented historical participation in the halibut or sablefish fisheries; direct access to saltwater on the GOA; no road access to a larger community; and be listed in Table 21 to 50 CFR part 679. The final rule implementing the CQE program was published in the **Federal Register** on April 30, 2004 (69 FR 23681).

As of April 29, 2011, 24 CQE non-profits corporations represent 24 unique Alaskan communities. Communities that are not identified in Table 21 to 50 CFR part 679 must be recommended by the Council to be approved for participation in the program. A regulatory change to 50 CFR Table 21 is required to add or remove an eligible CQE community. To be to receive benefits under the program an eligible community must form a non-profit cooperation, under the applicable State laws, and complete an application to NMFS. If approved, each CQE applicant must annually submit a report to NMFS summarizing the relevant activities of the non-profit cooperation.

NMFS proposes to allow Federally permitted CV and C/P vessels that do not meet the definition of stationary floating processor, and that do not harvest groundfish off GOA in the same calendar year, to operate as floating processors within the marine municipal boundaries of Western and Central GOA CQE communities. Such vessels would be permitted to process up to three percent of the Western GOA and up to three percent of the Central GOA Pacific cod TACs. NMFS would authorize vessels to receive deliveries and process groundfish in multiple CQE communities within a calendar year. This community protection measure is intended to promote new markets for processing groundfish in communities where there is currently no shoreside processor.

NMFS also proposes to permit eligible vessels to process groundfish in CQE communities that provide certified municipal land and water boundaries to the State of Alaska Department of Commerce, Community, and Economic Development (DCED). Community boundaries are defined as the certified municipal land and maritime boundaries provided to the DCED. Documentation of the established municipal boundaries, including CQE communities with certified municipal boundaries, can be found on the DCED Web site at *http://dcra.commerce.alaska.gov/DCBD/municipal%20Certificates/Cities/*. Tying

processing activity to Western and Central GOA CQE communities provides economic benefits from any increase in this activity to these communities (*i.e.*, tax revenues). Communities with certified municipal maritime boundaries would be eligible to receive tax revenues based on the value of the processing activity.

Cities and boroughs are considered municipalities by the State. All communities subject to this action are within a municipal boundary. Some communities are municipalities within municipal borough boundaries. Whether a community is a municipality within a municipal borough or not is important for tax revenues sharing purposes. Cities that are municipalities are guaranteed either 25 or 50 percent, depending on municipal status, of State fisheries taxes collected within their boundaries. Allowing motherships to operate in State waters within the boundaries of municipalities that levy taxes may have implications for employment in communities with processors, but mandating activity inside taxation zones ensures that communities will realize tax revenues similar to those collected without this action. During deliberations on Amendment 83, the Council and NMFS noted that many communities eligible to participate under the CQE program do not have certified maritime boundaries; however, these CQE communities could elect to apply, under the process established by the State, to certify new or to revise municipal land and maritime boundaries in order to participate in these community protection measures.

This action would permit eligible vessels to operate in the Western and Central GOA within the boundaries of municipalities eligible to participate in the CQE program. The owners or operators of motherships or other floating processors that are not stationary floating processors, defined at § 679.2, could apply for an FPP with a CQE floating processor endorsement. Under this action, Federally permitted vessels that receive and process groundfish from other vessels, and have not been used to harvest groundfish off Alaska during the same calendar year (*i.e.*, motherships) could temporarily process groundfish within the municipal boundaries of a Western or Central GOA CQE community. This action would retain established regulations that restrict the owners and operators of vessel from possessing both an FPP and an FFP simultaneously, as described in section II.A.3 of this preamble. Retaining this requirement ensures that Federally permitted vessels cannot participate in the Pacific cod fishing as both a SFP and a CQE floating processor in the same calendar year in the GOA. However, owners and operators of a vessel permitted with an FFP and a mothership endorsement that do not harvest groundfish in the GOA in a calendar year can surrender their FFP within a fishing year and apply for an FPP with a CQE endorsement. Exempting motherships from regulations intended to restrict harvesting vessels from surrendering their FFP would ensure that vessels exclusively engaged in mothership activity in the GOA could participate in the fisheries as both a mothership and CQE floating processor in the same calendar year, as described in section IX.A of this preamble.

To promote compliance with these community protection provisions, NMFS would establish several prohibitions to monitor and enforce the new processing caps. Although this proposed rule would not limit the number of CQE communities at which a permitted floating processor may operate, NMFS would establish regulations to ensure that the processing activity of motherships occurs within the maritime boundaries of CQE communities and is accurately accounted against the appropriate processing caps. NMFS would require VMS on all vessels receiving deliveries of groundfish in the Western and Central GOA (*e.g.* Federal reporting areas 610, 620, or 630) during a directed Pacific cod fishing season, as described in more detail in section X of this preamble. Similarly, vessels would be prohibited from delivering Pacific cod harvested in the Western or Central GOA to be processed on a vessel in a GOA regulatory area other than regulatory area that the harvest occurred. Processing caps are assigned based on TAC allocations to the Western and Central GOA regulatory areas and therefore would need to be accounted accurately to ensure that regional processing caps are not exceeded.

Two subsequent actions by the Council are likely to expand the scope of the CQE program. First is the GOA fixed gear recency action that the Council approved in April 2009; effective on April 21, 2011 (76 FR 15826). One purpose of the fixed gear recency action is to promote community protection measures at a level that would impose minimal impact on historic catch shares of recent participants. This action adds non-severable, gear-specific Pacific cod endorsements to fixed gear licenses that qualify under the landings thresholds, effectively limiting entry into the directed Pacific cod fisheries in Federal waters in the Western and Central GOA. The Council balanced the intent of preventing future entry of latent fixed gear groundfish licenses into the Pacific cod fisheries with retaining opportunities for CQE communities dependent on access to a range of fishing resources.

The CQE component of the fixed gear recency action allows each of the communities eligible under the CQE program in the Western and Central GOA to request a number of fixed gear and Pacific cod-endorsed licenses equal to the number currently held by residents of the community that are estimated to be removed under the fixed gear recency action under a 10 mt landing threshold, or two licenses, whichever is greater. The licenses issued to CQEs are non-transferable and have a specified MLOA of less than 60 feet for each vessel. CQEs are issued licenses for the area of the community they represent (Western or Central GOA). Licenses issued to CQEs located in the Western GOA would be endorsed only for pot gear. CQE communities in the Central GOA have the option to notify NMFS what proportion of their LLP licenses would have a pot endorsement or a hook-and-line endorsement.

Under this proposed action, vessel owners and operators would need to apply for a CQE floating processor endorsement. This would require changes to the FPP application that may require a permit holder to amend their existing FFP. For example, permit holders would be prohibited from possessing both a stationary floating processor and a CQE floating processor endorsement on their FPP; therefore, vessel owners and operators currently permitted to operate as a stationary floating processor might need to amend their FPP to remove the stationary floating processor endorsement and add a CQE floating processor endorsement. Similarly, permit holders with a mothership FFP endorsement choosing to operate as a CQE floating processor would need to surrender their FFP and apply for an FPP with the appropriate endorsements.

In addition, vessels operating as CQE floating processors would need to meet Federal monitoring and reporting requirements. In order for Pacific cod harvest to accrue against the delivery vessel's sector allocation, CQE floating processors in the Western and Central GOA would be required to submit accurate and timely reports via eLandings. Such requirements are necessary for NMFS to manage the Pacific cod harvest at or below TAC in each GOA regulatory area and to

manage processing caps both inside and outside of CQE municipal boundaries in the Western GOA.

Secondly, the Council is considering proposals that would amend the existing list of CQE communities at Table 21 to 50 CFR part 679 to add up to three communities to the list of eligible communities in the GOA. At its February 2010 meeting, the Council reviewed a proposal that would amend the existing CQE program to add one community, Cold Bay, in the Western GOA. The two other communities under consideration, Game Creek and Naukati Bay, are located in the Eastern GOA and would not be directly regulated under this provision. If all the qualifying criteria are met, then adding these communities to the list of eligible municipalities would expand the scope of the community protection provisions of this action.

C. Definition of Stationary Floating Processor

Under the proposed action, NMFS would retain several provisions, including certain prohibitions, regulating stationary floating processors in the GOA under the inshore/offshore allocation. NMFS would continue to require that stationary floating processors be limited to processing groundfish at a single geographic location during a given year to promote stability to the GOA Pacific cod fisheries. Similarly, this action would retain the regulatory provisions prohibiting vessels from operating as stationary floating processor for Pacific cod in the GOA and as AFA C/Ps or AFA motherships in the BSAI during the same year, or as C/Ps or motherships in the GOA during the same year, to maintain participation in the fisheries at historic levels.

As part of this proposed action, NMFS would revise the definition of ''inshore component'' in the GOA to remove references to processing Pacific cod in the Western and Central GOA. The Council recommended revising other regulations governing stationary floating processors to preserve the processing patterns established during the inshore/offshore allocations. Therefore, NMFS also would modify the definition of ''stationary floating processor'' to (1) require a stationary floating processor in the Western and Central GOA to process Pacific cod only at a single geographic location in State waters in a given year, and (2) prohibit a stationary floating processor in the Western and Central GOA from operating under the authority of an FFP in the GOA or under an FPP with CQE floating processor endorsement during the same calendar year.

IX. License Requirements

A. Participants in Parallel Fisheries

NMFS proposes to limit entry by Federally permitted vessels into the parallel waters fishery. If Western or Central GOA Pacific cod sector allocations are established, parallel waters activity by Federally permitted vessel operators who do not hold LLP licenses is likely to erode the catches of historical participants who contributed catch history that helped determine the sector allocations and who depend on the GOA Pacific cod resource. Vessels fishing in Federal waters are required to hold an LLP license with the appropriate area, gear, and species endorsements, but vessels fishing in parallel State waters are not required to hold an LLP license. The Council recommendation would not allow Federally permitted vessels that do not have LLP licenses to participate in the Western or Central GOA Pacific cod parallel fishery adjacent to the Western or Central GOA regulatory areas. In addition, operators of pot, hook-and-line, or trawl vessels who hold an LLP license and an FFP would be required to have the appropriate gear, area, and species endorsements on the LLP license and FFP in order to participate in the Western or Central GOA Pacific cod parallel waters fisheries. Furthermore, Federally permitted vessel operators would be required to adhere to Federal seasonal closures and sector allocation closures while targeting Pacific cod in parallel waters. If unrestricted entry into the parallel fisheries were allowed, the objective of the proposed action, to increase stability in the Pacific cod fishery in the GOA, might not be achieved.

NMFS also proposes a regulatory limit on the number of times each FFP with Pacific cod endorsements in the GOA can be reactivated during the 3-year term of the permit. Operators of vessels designated on an FFP are subject to NMFS observer, VMS, and recordkeeping and reporting requirements while fishing in Federal and State waters for groundfish. The loss of fisheries records due to vessels surrendering an FFP, while targeting Pacific cod in State waters, could degrade the quality of information available to manage the Pacific cod fishery, and may lead to increased competition within a sector and among sectors prosecuting the Pacific cod fishery within State waters. To prevent operators from circumventing these requirements, operators with a Pacific cod endorsement, a GOA area designation, a trawl, hook-and-line, pot, or jig gear designation, and a C/P or CV operation type designation would be precluded from removing these designations from the FFP, and if surrendered, each FFP would be limited to one reactivation during the 3-year term of the permit.

The owners and operators of vessels that do not harvest groundfish in the GOA and are endorsed as motherships on their FFP would be exempt from requirements limiting the reactivation of a surrendered permit. Vessels engaged solely in mothership activity could surrender their FFP multiple times in the 3-year term and remain eligible for a reissued FFP. If implemented, this exemption would enable motherships to surrender their FFP and operate as a CQE floating processor under the authority of an FPP in the same year. There is no limit on the times an FPP can be reissued; thus, a mothership vessel could process Pacific cod up to the Western GOA processing cap and the Western and Central GOA CQE floating processing cap in the same year and alternate between FFP and FPP multiple times in a 3-year permitting cycle. However, to account for Pacific cod processed under these processing caps, NMFS would require vessels receiving groundfish from other vessels for processing to have an operational VMS, as described in section X of this preamble.

This action would not restrict an FFP holder from removing Pacific cod species endorsements from their FFP. Currently, an FFP holder can remove the species endorsement at anytime during the 3-year term of the FFP without surrendering the FFP. Vessels without a Pacific cod species endorsement are not required to have an operational VMS onboard while targeting other fisheries during the GOA Pacific cod fishing seasons but NMFS would continue to require vessels to meet all observer and reporting requirements. The Council noted that license holders typically amend FFPs to remove the species endorsements to relieve the VMS requirements while targeting salmon within State waters, and that if this action is implemented, those vessels would be prohibited from targeting Pacific cod without the proper endorsements.

B. Western and Central GOA Catcher Vessel Endorsements

NMFS proposes that eligible C/P LLP license holders make a one-time election to receive an additional Western GOA CV and/or Central GOA CV endorsement for Pacific cod. C/P

license holders would be eligible if they made at least one Pacific cod landing while operating as a CV under the authority of the C/P endorsement on their LLP license from 2002 through 2008. The Council recommended this action to preclude operators from fishing off both the C/P and CV allocations with hook-and-line or trawl gear types. Otherwise, a C/P operator could fish off the hook-and-line C/P or trawl C/P allocation until it was fully harvested, and then could opportunistically continue to fish as a CV, if the hook-and-line or trawl CV allocation had not yet been fully harvested. The potential for such an outcome is inconsistent with the Council's objective to bring stability to the fishery through sector allocations and would disadvantage the CVs who would not be able to fish off of the C/P Pacific cod allocation.

LLP license holders with C/P endorsements not electing to add a CV endorsement would have all incidental and direct catch of Pacific cod accrued against the C/P allocation. However, this action would not preclude a C/P vessel from operating as a CV. All Pacific cod harvested while a vessel is operating as a CV would be counted against the C/P allocation for that regulatory area.

LLP license holders electing to add a CV endorsement for the Western or Central GOA would have all Pacific cod catch, incidental and direct, accrue against the CV allocation. To protect communities historically invested in the inshore sector under the inshore/offshore split, C/Ps electing to add a CV endorsement in the Western or Central GOA would be prohibited from acting as a C/P in the directed Pacific cod fishery. These vessels would, by default, depend on the components of the Pacific cod fishery traditionally associated with the inshore processing sector. LLP license holders electing to add a CV endorsement would retain their C/P endorsements in other directed fisheries; however, their incidental catch of Pacific cod in those fisheries would accrue against the CV allocation for that gear type and regulatory area. This action would not preclude operators from using more than one gear type to participate in the GOA Pacific cod fishery during a given season or year. For example, vessel operators are expected to use both trawl and pot gear in the GOA Pacific cod fishery during a given season or year, if the operator has the required LLP license and FFP endorsements.

The NMFS Restricted Access Management Program (RAM) would continue to oversee permits issued under the LLP. RAM will notify eligible C/Ps of the one-time election opportunity to add a Western GOA or Central GOA CV Pacific cod endorsement on an LLP license. Although the election is voluntary and no deadline for requesting the additional endorsements would be established under this action, interested vessel owners or operators would need to notify RAM in writing of their desire to add each additional endorsement.

X. Monitoring and Enforcement

This proposed rule would not change any of the observer requirements for the GOA Pacific cod fisheries, found in regulations at § 679.50. However, the Council took action in October 2010 to restructure the observer program for vessels and processors that are determined to need less than 100% observer coverage in the Federal fisheries, including sectors of the fishery such as vessels less than 60' LOA. The goals of the restructured observer program are to improve observer data quality, increase equity in the cost and burden of carrying an observer among the industry, and increase NMFS' ability to be flexible in responding to current and future management needs of individual fisheries. The restructured observer program would remove observer coverage requirements based on vessel length and processing volume and eliminate all exemptions from observer coverage. For example, all GOA trawl CVs regardless of length (except those participating in the Central GOA rockfish fishery), would participate in a restructured program where NMFS contracts with service providers to deploy observers in a randomized fashion. Vessels and processors included in the restructured program would pay an ex-vessel value-based fee on their groundfish and halibut landings to pay for the observer coverage. NMFS anticipates implementing the restructured observer coverage requirements in either 2013 or 2014, depending on the availability of Federal funding for the start-up year.

The GOA Pacific cod fisheries are managed as a limited access race for fish, with fleet-wide TACs in the Western, Central, and Eastern GOA, as described in more detail in section II of this preamble. If the Council's recommendations under Amendment 83 are implemented, the monitoring and enforcement of seasonal sector allocations and processing caps in the Western and Central GOA will supersede the inshore/offshore system. Inseason management of the Pacific cod fisheries in the Western and Central GOA would require NMFS to monitor catch accruing against 26 seasonal TACs and three processing caps. In the Eastern GOA, NMFS would continue to monitor and enforce the two annual inshore/offshore allocations of Pacific cod. Furthermore, if approved, this action would require NMFS to manage two additional GOA-wide allocations of hook-and-line halibut PSC limit, which would be divided between C/Ps and CVs, and also apportioned seasonally. In order to ensure proper catch accounting under the proposed sector allocations, NMFS would prohibit deliveries of Pacific cod harvested in the GOA to a vessel for processing that is located in a different regulatory area.

To adequately monitor and enforce the community protection provisions described in section VIII of this preamble, NMFS would require that all vessels receiving deliveries for processing use VMS. Currently, VMS requirements apply to CVs and C/Ps that hold an FFP with a pollock, Pacific cod, or Atka mackerel species endorsement on their FFP, while vessels that solely process fish are not required to hold an FFP or use VMS while operating in the GOA. NMFS recognizes that monitoring and enforcing the various processing caps and geographic restrictions proposed under this action would require additional monitoring tools. Proposed requirements that floating processors operate within the municipal boundaries of a CQE community may not be practicable unless these floating processors are required to use VMS. Therefore, NMFS proposes to require that all vessels receiving deliveries from other vessels for processing in the Western and Central GOA (*e.g.* Federal reporting areas 610, 620, or 630) have an active VMS system while processing groundfish during a directed Pacific cod fishery.

Monitoring and enforcement under Amendment 83 are described in more detail in sections 2.2.8 and 2.3.3 of the EA/RIR/IRFA for this action (see **ADDRESSES**).

XI. Summary of Regulatory Changes

This action proposes the following changes to the existing regulatory text at 50 CFR parts 679 and 680:

- Revise references to the inshore/offshore Pacific cod fishery in the Western and Central GOA throughout 50 CFR Part 679;
- Modify existing regulations for surrendering and amending FFPs at § 679.4;
- Prohibit vessels from participating in the parallel fishery unless the vessel has the required FFP and LLP endorsements;
- Add an FPP CQE floating processor endorsement, and a new Western and

Central GOA CV endorsement on LLP licenses at § 679.4;

- Add prohibitions necessary to monitor and enforce community protection provisions for processing entities in the Western and Central GOA at § 679.7;
- Establish seasonal Pacific cod TAC allocations by sector in the Western and Central GOA regulatory areas, at § 679.20;
- Modify existing regulations for assigning halibut PSC limit allotments at § 679.21;
- Add regulations to implement operational, vessel length, and gear type Pacific cod TAC allocations and reapportionments in the Western and Central GOA at § 679.20;
- Modify existing regulations to include new jig seasons and remove expired regulations at § 679.23;
- Require VMS on all vessels engaged in mothership activity in the Western and Central GOA at § 679.28; and
- Add gear type specifications for non-AFA crab sideboard ratios at § 680.22.

Other Proposed Regulatory Amendments

This rule would remove and reserve unnecessary regulations at § 679.23(d)(4). This paragraph established directed Pacific cod fishing seasons that expired December 31, 2002. One correction would also be made to regulations currently at § 679.4(b)(4)(ii)(a) to remove a reference ''to the permit holder of record.'' The proposed modification would clarify that a surrendered FFP may be reissued to a person other than the permit holder of record, should the vessel owner change.

XII. Classification

Pursuant to sections 304(b) and 305(d) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the MSA, and other applicable law, subject to further consideration of comments received during the public comment period.

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

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSES**). Amendment 83 was chosen based on those measures that maximized net benefits to the affected participants in the GOA Pacific cod fisheries. Specific aspects of the RIR are discussed below in the initial regulatory flexibility analysis (IRFA) section.

Initial Regulatory Flexibility Analysis (IRFA)

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained at the beginning of this section and in the SUMMARY section of the preamble and are not repeated here. A summary of the analysis follows. A copy of the complete analysis is available from NMFS (see **ADDRESSES**).

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business ''involved in fish harvesting'' is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Number and Description of Small Entities Regulated by the Proposed Action

The proposed action directly regulates CVs and C/Ps that participate in the Pacific cod fisheries in the GOA. The number of small entities potentially impacted by the proposed action was estimated by calculating 2009 gross earnings for CVs, and 2009 first wholesale revenues for C/Ps, from their respective participation in all commercial fisheries in and off Alaska. Earnings estimates for 2010 are not currently available.

In 2009, 445 catcher vessels retained Pacific cod in the GOA, including vessels that did not participate in the directed Federal fisheries, and only had incidental catch of Pacific cod. Forty-five of these catcher vessels were either members of AFA cooperatives and, as such, are not considered small entities for the purpose of the RFA. The remaining 401 catcher vessels are all considered small entities. In 2009, forty-one catcher processors retained Pacific cod in the GOA, and 7 of these vessels are estimated to be small entities.

In addition, five processing entities would be directly regulated by this proposed action. A review of processor activity from 2002 through 2010 revealed that five active processing entities own seven stationary floating processors and four motherships that have participated in the GOA Pacific cod fisheries. In the absence of detailed employment data, size determinations were based on a staff review of known ownership information and knowledge of Alaska processing firms. On this basis, nine of these vessels are *not* considered small entities for the purpose of the RFA, because they appear to be owned by firms that exceed the ''500 or more employees'' threshold, when all their affiliates worldwide are included. NMFS estimates that two vessels, owned by two different processing entities, are small entities.

It is likely that additional CVs, C/P vessels, or processing entities are affiliated through partnerships, or in other ways, with other entities, and would be considered large entities for the purpose of this action, if more complete ownership information were available.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

Description of Significant Alternatives to the Proposed Action That Minimize Adverse Impacts on Small Entities

The Council considered two alternatives for this action, along with a suite of ''options'' that could be adopted singularly or in combination. Alternative 1 is the no action alternative, in which the Western and Central GOA Pacific cod TACs would not be allocated among the various sectors, and the fisheries would continue to be managed as a limited access race for fish. Under Alternative 2, the Western and Central GOA Pacific cod TACs would be allocated among the various gear sectors and operation types. Allocations would be based on retained catch history over a series of years during 1995 through 2005, 2000 through 2006, 2002 through 2007, or 2002

through 2008, or upon other criteria. The action would have similar impacts on small and large entities. Allocations would stabilize catches of the sectors. Options to increase the jig sector allocation beyond historical catch levels would be advantageous to jig vessels, which are among the smallest entities participating in the fisheries. The jig allocation allows for potential growth in entry-level opportunities in the GOA Pacific cod fisheries. During 1995 through 2008, the jig sector harvested, on average, less than 1 percent of the Western and Central GOA Pacific cod TACs. This allocation could potentially increase to 6 percent of the Western and Central GOA TACs, but would not be expected to do so, in the foreseeable future. Nonetheless, this provision explicitly recognizes and accommodates the special circumstances of the group of small entities.

The Council considered, but rejected, options to establish separate allocations for trawl and hook-and-line C/Ps that have historically fished off the inshore TACs. Establishing distinct inshore C/P allocations would protect harvests of smaller C/Ps, if combined with a provision to limit entry to the inshore processing component. Prior to removing the option to create distinct inshore C/P allocations, the Council reviewed data that showed that during most years, nearly all C/Ps less than 125 ft (45.7 m) LOA elected to fish inshore. Therefore, if C/P allocations were to be based on vessel length (*e.g.,* vessels less than, and vessels greater than 125 ft (45.7 m) LOA, these allocations would be nearly identical to allocations based on catch by the inshore and offshore processing components. This would not serve the objectives for this action.

The Council considered options to assign mothership processing caps as high as 10 percent of the Western and Central GOA Pacific cod TACs. High processing caps would benefit mothership vessels that have traditionally processed little Pacific cod in the GOA. From 2002 through 2008, less than 2 percent of the Western GOA TAC had been processed annually by motherships, and no mothership processing activity had occurred in the Central GOA. The Council declined to increase processing caps above recent participation levels, because such a recommendation is inconsistent with the objectives of this action and could redistribute catch, imposing greater economic burdens on other directly regulated entities with documented dependence (*i.e.,* recent catch history) of these resources.

Based upon the best available scientific data and information, none of the alternatives to the proposed action appear would accomplish the stated objectives of the MSA and other applicable statutes, while minimizing any significant adverse economic impact on small entities, beyond those achieved under the proposed rule.

Recordkeeping and Reporting Requirements

Implementation of the proposed action would require NMFS to modify the catch accounting system to track catch by each sector. However, vessels fishing off these allocations will simply have to report their catch to through existing information collections and catch will be deducted from the appropriate account by the Agency, in accordance with the proposed revisions to the catch monitoring and accounting program.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been approved by OMB. The collections are listed below by OMB control number.

OMB Control No. 0206

Public reporting burden per response is estimated to average 21 minutes for Federal Fisheries Permit application; and 21 minutes for Federal Processor Permit application.

OMB Control No. 0213

Public reporting burden per response is estimated to average 31 minutes for a Mothership Daily Cumulative Production Logbook.

OMB Control No. 0334

Endorsements to the License Limitation Program (LLP) license are mentioned in this rule; however, the public reporting burden for this collection-of-information is not directly affected by this rule.

OMB Control No. 0445

Public reporting burden is estimated to average 12 minutes for Vessel Monitoring System (VMS) check-in report; and 4 hours for VMS operation (includes installation, transmission, and maintenance).

OMB Control No. 0515

Public reporting burden is estimated to average 15 minutes for the Interagency Electronic Reporting System (IERS) processor registration; 35 minutes for eLandings landing report; 10 minutes for shoreside eLanding production report; and 20 minutes for at-sea eLanding production report;

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Parts 679 and 680

Alaska, Fisheries, Reporting and recordkeeping 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 parts 679 and 680 are proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

2. In § 679.2,

a. Add definition of ''CQE Floating Processor; and

b. Revise the definitions of ''Hook-and-line catcher/processor,'' ''Inshore component in the GOA,'' ''Mothership,'' ''Offshore Component in the GOA,'' ''Pot catcher/processor,'' and ''Stationary floating processor (SFP)'' to read as follows:

§ 679.2 Definitions.

* * * * *

CQE floating processor means, for the purposes of processing Pacific cod within the marine municipal boundaries of CQE communities (see Table 21 of this part) in the Western or Central Gulf of Alaska Federal reporting areas 610, 620, or 630, a vessel not meeting the definition of a stationary floating processor in this section, that has not harvested groundfish in the Gulf of Alaska in the same calendar year, and

operates on the authority of an FPP endorsed as a CQE floating processor.

* * * * *

Hook-and-line catcher/processor means a catcher/processor vessel that is named on a valid LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for any of the following areas: Bering Sea, Aleutian Islands, and/or any area in the Gulf of Alaska; and endorsed for catcher/processor fishing activity, catcher/processor, Pacific cod, and hook-and-line gear.

* * * * *

Inshore component in the GOA means the following three categories of the U.S. groundfish fishery that process pollock harvested in the GOA or Pacific cod harvested in the Eastern GOA:

(1) Shoreside processors.

(2) Vessels less than 125 ft (45.7 m) LOA that hold an inshore processing endorsement on their Federal fisheries permit, and that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and Eastern GOA Pacific cod.

(3) Stationary floating processors that—

(i) Hold an inshore processing endorsement on their Federal processor permit;

(ii) Process pollock harvested in a GOA directed fishery at a single GOA geographic location in Alaska state waters during a fishing year; and/or,

(iii) Process Pacific cod harvested in the Eastern GOA regulatory area at a single GOA geographic location in Alaska state waters during a fishing year.

* * * * *

Mothership means:

(1) A vessel that receives and processes groundfish from other vessels; or

(2) With respect to subpart E of this part, a processor vessel that receives and processes groundfish from other vessels and is not used for, or equipped to be used for, catching groundfish; or

(3) For the purposes of processing Pacific cod within the marine municipal boundaries of CQE communities (as defined in Table 21 to this part) in the Western or Central Gulf of Alaska, motherships include vessels with a CQE floating processor endorsements on their Federal processor permit that receive and process groundfish from other vessels.

* * * * *

Offshore component in the GOA means all vessels not included in the definition of ''inshore component in the GOA'' that process pollock harvested in the GOA, and/or Pacific cod harvested in the Eastern GOA.

* * * * *

Pot catcher/processor means a catcher/processor vessel that is named on a valid LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea, Aleutian Islands, and/or Gulf of Alaska catcher/processor fishing activity, catcher/processor, Pacific cod, and pot gear.

* * * * *

Stationary floating processor (SFP) means:

(1) A vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI; and,

(2) In the Western and Central GOA Federal reporting areas 610, 620, or 630, a vessel that has not operated as a catcher/processor, CQE floating processor, or mothership in the GOA during the same fishing year; however, an SFP can operate as catcher/processor or mothership in the BSAI and an SFP in the Western and Central GOA during the same fishing year

* * * * *

3. In § 679.4,

a. Redesignate paragraph (f)(2)(v) as paragraph (f)(2)(vi);

b. Revise paragraphs (b)(4)(ii), (b)(4)(iii), (b)(5)(iv), (f)(1), (f)(2) introductory text, (f)(2)(i), (f)(2)(iii), and newly redesignated (f)(2)(vi); and

c. Add paragraphs (f)(2)(v), (k)(10)(vii), and (k)(10)(viii) to read as follows:

§ 679.4 Permits.

* * * * *

(b) * * *

(4) * * *

(ii) *Surrendered permit*—(A) An FFP permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. Except as provided under paragraph (b)(4)(ii)(B) and (C) of this section, if surrendered, an FFP may be reissued in the same fishing year in which it was surrendered. Contact NMFS/RAM by telephone, locally at 907–586–7202 (Option #2) or toll-free at 800–304–4846 (Option #2).

(B) In the BSAI, NMFS will not reissue an FFP to the owner of a vessel named on an FFP that has been issued with endorsements for catcher/processor vessel operation type, pot or hook-and-line gear type, and the BSAI area, until after the expiration date of the surrendered FFP.

(C) In the GOA, NMFS will not reissue an FFP to the owner of a vessel named on an FFP that has been issued a GOA area endorsement and any combination of endorsements for catcher/processor operation type, catcher vessel operation type, trawl gear type, hook-and-line gear type, pot gear type, or jig gear type until after the expiration date of the surrendered FFP.

(iii) *Amended permit*—(A) An owner, who applied for and received an FFP, must notify NMFS of any change in the permit information by submitting an FFP application found at the NMFS Web site at *http://alaskafisheries.noaa.gov.* The owner must submit the application as instructed on the application form. Except as provided under paragraph (b)(4)(iii)(B) and (C) of this section, upon receipt and approval of a permit amendment, the Program Administrator, RAM, will issue an amended FFP.

(B) In the BSAI, NMFS will not approve an application to amend an FFP to remove a catcher/processor vessel operation endorsement, pot gear type endorsement, hook-and-line gear type endorsement, or BSAI area endorsement from an FFP that has been issued with endorsements for catcher/processor operation type, pot or hook-and-line gear type, and the BSAI area.

(C) In the GOA, NMFS will not approve an application to amend an FFP to remove endorsements for catcher/processor operation type, catcher vessel operation type, trawl gear type, hook-and-line gear type, pot gear type, or jig gear type, and the GOA area.

(D) In the GOA, an FFP holder can amend an FFP to remove specific Pacific cod gear type endorsement(s) at any time during the 3-year term of the permit without surrendering the FFP.

(5) * * *

(iv) *Area and gear information.* Indicate the type of vessel operation. If catcher/processor or catcher vessel, indicate only the gear types used for groundfish fishing. If the vessel is a catcher/processor under 125 ft (45.7 m) LOA that is intended to process GOA inshore pollock or Pacific cod harvested in the inshore component of the Eastern GOA, mark the box for a GOA inshore processing endorsement.

* * * * *

(f) * * *

(1) *Requirement.* No shoreside processor of the United States, stationary floating processor, or CQE floating processor described at (f)(2) of this section may receive or process groundfish harvested in the GOA or BSAI, unless the owner first obtains a Federal processor permit issued under

this part. A Federal processor permit is issued without charge.

(2) *Contents of an FPP application.* To obtain an FPP, the owner must complete an FPP application and provide the following information (see paragraphs (f)(2)(i) through (vi) of this section) for each SFP, shoreside processor plant, and CQE floating processor to be permitted:

(i) *New or amended permit.* Indicate whether application is for a new or amended FPP; and if an amended permit, provide the current FPP number. Indicate whether application is for a shoreside processor, an SFP, or a CQE floating processor.

* * * * *

(iii) *SFP information.* Indicate the vessel name; whether this is a vessel of the United States; USCG documentation number; ADF&G vessel registration number; ADF&G processor code; the vessel's LOA (ft); registered length (ft); gross tonnage; net tonnage; shaft horsepower; home port (city and state); and whether choosing to receive a GOA inshore processing endorsement. A GOA inshore processing endorsement is required in order to process GOA inshore pollock and Eastern GOA inshore Pacific cod.

* * * * *

(v) *CQE floating processor information*—(A) A vessel owner that applies to process groundfish harvested by another vessel within the marine municipal boundaries of a Western GOA or Central GOA CQE community (as defined in Table 21 to this part) under the authority of an FPP CQE floating processor endorsement must indicate: the vessel name; whether this is a vessel of the United States; USCG documentation number; ADF&G vessel registration number; ADF&G processor code; vessel's LOA (ft); registered length (ft); gross tonnage; net tonnage; shaft horsepower; home port (city and state); and whether choosing to receive a GOA inshore processing endorsement.

(B) The owner of the vessel must indicate if they harvested groundfish in the GOA or acted as an SFP in the GOA during the current calendar year.

(C) The owner of the vessel must indicate if they hold an FFP or an SFP endorsement on their FFP for the same vessel.

(vi) *Signature.* The owner or agent of the owner of the shoreside processor, SFP, or CQE floating processor must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

* * * * *

(k) * * *

(10) * * *

(vii) *Additional endorsements for groundfish license holders eligible to participate in the Western and/or Central GOA Pacific cod fisheries*—(A) *Requirements.* A license limitation groundfish license holder can elect to permanently add a catcher vessel endorsement for the Western and/or Central GOA if the license holder—

(*1*) Is operating under the authority of a groundfish license endorsed for Pacific cod in Western and Central GOA, as described at paragraphs (k)(4)(vi) or (k)(10)(ii) of this section;

(*2*) Is endorsed to participate as a catcher/processor in the Western and/or Central GOA Pacific cod fishery; and,

(*3*) Made a minimum of one Pacific cod landing while operating as a catcher vessel under the authority of the catcher/processor license in Federal reporting areas 610, 620, or 630, from January 1, 2002, through December 31, 2008.

(*4*) Or, is the holder of a license limitation groundfish license endorsed for trawl gear Western and/or Central GOA and made a minimum of one Pacific cod landing while operating as a catcher vessel under the authority of the catcher/processor license in Federal reporting areas 610, 620, or 630, from January 1, 2002 through December 31, 2008.

(B) *Additional Central GOA and/or Western GOA catcher vessel endorsement.* Any Holder of an LLP license that has a catcher vessel endorsement for the Western and/or Central GOA under paragraph (k)(10)(vii) of this section—

(*1*) Is prohibited, at § 679.7(k)(1)(iv)(B), from catching and processing Pacific cod onboard a vessel under the authority of that groundfish license in the directed Pacific cod fishery in the Western or Central GOA Federal reporting areas 610, 620, or 630;

(*2*) Will have all directed catch of Pacific cod harvested under the authority of that groundfish license accrue against the respective GOA regulatory area catcher vessel allocations; and,

(*3*) Will have all incidental catch of Pacific cod in the Western GOA or Central GOA Federal reporting areas 610, 620, or 630, harvested under the authority of that groundfish license accrue against the respective GOA regulatory area catcher vessel allocations.

(C) *Eligible license holders not electing to add catcher vessel endorsement(s).* Any holder of an LLP license that does not have a catcher vessel endorsement for the Western and/or Central GOA under paragraph (k)(10)(vii) of this section may participate in the Western GOA or Central GOA directed Pacific cod fishery as a catcher/processor or a catcher vessel; however, direct and incidental catch of Pacific cod in the Western GOA and Central GOA will accrue against the respective catcher/processor allocation.

(D) *Multiple or stacked LLP licenses.* A vessel that does not meet the requirements at paragraph (k)(10)(vii) of this section but does have multiple, stacked, LLP licenses and one of those stacked licenses is endorsed as a catcher/processor eligible to harvest Pacific cod in the Western GOA or Central GOA Federal reporting areas 610, 620, or 630, all catch will accrue against the catcher/processor sector allocation for that gear type.

(E) *Catch history.* NMFS will assign legal landings to each groundfish license for an area based only on information contained in the official record as described in paragraph (k)(10)(viii) of this section.

(viii) *Catcher/processor participation in the Western GOA and Central GOA official record*—(A) The official record will contain all information used by the Regional Administrator to determine the following:

(*1*) The number and amount of legal landings made under the authority of that license by gear type, and operational mode;

(*2*) All other relevant information necessary to administer the requirements described in paragraphs (k)(10)(vii)(A)(*1*) through (k)(10)(vii)(A)(*3*) of this section.

(B) The official record is presumed to be correct. A groundfish license holder has the burden to prove otherwise.

(C) For the purposes of creating the official record, the Regional Administrator will presume if more than one person is claiming the same legal landing, then each groundfish license for which the legal landing is being claimed will be credited with the legal landing;

(D) Only legal landings as defined in § 679.2 and documented on State of Alaska Fish Tickets or NMFS weekly production reports will be used to assign legal landings to a groundfish license.

(E) The Regional Administrator will specify by letter a 30-day evidentiary period during which an applicant may provide additional information or evidence to amend or challenge the information in the official record. A person will be limited to one 30-day evidentiary period. Additional information or evidence received after the 30-day evidentiary period specified

in the letter has expired will not be considered for purposes of the initial administrative determination.

(F) The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the person fails to support the person's claims and is insufficient to rebut the presumption that the official record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies with the information, or the evidence submitted in support of the information. The IAD will also indicate which claims cannot be approved based on the available information or evidence. A person who receives an IAD may appeal pursuant to § 679.43. A person who avails himself or herself of the opportunity to appeal an IAD will receive a non-transferable license pending the final resolution of that appeal, notwithstanding the eligibility of that applicant for some claims based on consistent information in the official record.

* * * * *

4. In § 679.5,

a. Revise paragraphs (c)(6)(i), (c)(6)(v)(C), (e)(3)(iv)(B), (e)(6) introductory text, (e)(6)(i) introductory text, (e)(10)(ii), and (e)(10)(iii) introductory text; and

b. Add paragraph (e)(6)(i)(A)(*12*) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(c) * * *

(6) *Mothership DCPL*—(i) *Responsibility.* Except as described in paragraph (f)(1)(v) of this section, the operator of a mothership that is required to have an FFP under § 679.4(b), or the operator of a CQE floating processor that receives or processes any groundfish from the GOA or BSAI from vessels issued an FFP under § 679.4(b) is required to use a combination of mothership DCPL and eLandings to record and report daily processor identification information, delivery information, groundfish production data, and groundfish and prohibited species discard or disposition data. The operator must enter into the DCPL any information for groundfish received from catcher vessels, groundfish received from processors for reprocessing or rehandling, and groundfish received from an associated buying station documented on a BSR.

* * * * *

(v) * * *

(C) *Vessel information.* Name of mothership, or CQE floating processor as displayed in official documentation, FFP or FPP number, and ADF&G processor code.

* * * * *

(e) * * *

(3) * * *

(iv) * * *

(B) *Groundfish catcher/processor, mothership or CQE floating processor.* If a groundfish catcher/processor or mothership, enter the FFP number; if a CQE floating processor, enter FPP number.

* * * * *

(6) *Mothership landings report.* The operator of a mothership that is issued an FFP under § 679.4(b) or a CQE floating processor that receives groundfish from catcher vessels required to have an FFP under § 679.4 is required to use eLandings or other NMFS-approved software to submit a daily landings report during the fishing year to report processor identification information and the following information under paragraphs (e)(6)(i) through (iii) of this section:

(i) *Information entered for each groundfish delivery to a mothership.* The User for a mothership must enter the following information (see paragraphs (e)(6)(i)(A)(*1*) through (*12*) of this section) provided by the operator of a catcher vessel, operator or manager of an associated buying station, or information received from processors for reprocessing or rehandling product.

(A) * * *

(*12*) Receiving deliveries of groundfish in the marine municipal boundaries of a CQE community listed in Table 21 to this part.

* * * * *

(10) * * *

(ii) *Mothership.* The operator of a mothership that is issued an FFP under § 679.4, or the operator of a CQE floating processor that receives groundfish is required to use eLandings or other NMFS-approved software to submit a production report to record and report daily processor identification information, groundfish production data, and groundfish and prohibited species discard or disposition data.

(iii) *Contents.* eLandings autofills the following fields when creating a production report for a catcher/processor or mothership: FFP or FPP number, company name, ADF&G processor code, User name, e-mail address, and telephone number. The User must review the autofilled cells to ensure that they are accurate for the current report. In addition, the User for the catcher/processor or mothership must enter the information in paragraphs (e)(10)(iii)(A) through (N) of this section.

* * * * *

5. In § 679.7,

a. Revise paragraphs (a)(7)(vi), (viii) and (ix), (a)(15), and (k)(1)(iv); and

b. Add paragraphs (b)(4), (b)(5), (b)(6), (b)(7), and (k)(2)(ii) to read as follows:

§ 679.7 Prohibitions.

(a) * * *

(7) * * *

(vi) Except as provided in paragraph (k)(3)(iv) of this section, use a stationary floating processor with a GOA inshore processing endorsement to process pollock harvested in the GOA or Pacific cod harvested in the Eastern GOA in a directed fishery for those species in more than one single geographic location in the GOA during a fishing year.

* * * * *

(viii) Use a vessel operating under the authority of a groundfish license with a Pacific cod endorsement to directed fish for Pacific cod in the Eastern GOA apportioned to the inshore component of the GOA as specified under § 679.20(a)(6) if that vessel has directed fished for Pacific cod in the Eastern GOA apportioned to the offshore component of the Eastern GOA during that calendar year.

(ix) Use a vessel operating under the authority of a groundfish license with a Pacific cod endorsement to directed fish for Pacific cod in the Eastern GOA apportioned to the offshore component of the Eastern GOA as specified under § 679.20(a)(6) if that vessel has directed fished for Pacific cod in the Eastern GOA apportioned to the inshore component of the GOA during that calendar year.

* * * * *

(15) *Federal processor permit*—(i) Receive, purchase or arrange for purchase, discard, or process groundfish harvested in the GOA or BSAI by a shoreside processor or SFP and in the Western and Central GOA regulatory areas, including Federal reporting areas 610, 620, and 630, a CQE floating processor, that does not have on site a valid Federal processor permit issued pursuant to § 679.4(f).

(ii) Receive, purchase or arrange for purchase, discard, or process groundfish harvested in the GOA by a CQE floating processor that does not have on site a valid Federal processor permit issued pursuant to § 679.4(f).

* * * * *

(b) * * *

(4) *Catcher vessel restrictions*—(i) Deliver Pacific cod harvested in the Western GOA or Central GOA regulatory area including Federal reporting areas 610, 620, or 630, to a vessel for processing in a GOA regulatory area other than the area in which the harvest occurred.

(ii) Deliver Pacific cod harvested in the Western GOA or Central GOA regulatory area, including Federal reporting areas 610, 620, or 630, to another vessel for processing unless the processing vessel carries an operable NMFS-approved Vessel Monitoring System that complies with the requirements in § 679.28(f).

(iii) Deliver Pacific cod harvested in the Western GOA or adjacent waters parallel directed fishery to a vessel for processing in excess of the processing limits established at § 679.20(a)(12)(iv) or (v), unless the processing vessel meets the definition of a stationary floating processor at § 679.2.

(iv) Deliver Pacific cod harvested in the Central GOA or adjacent waters parallel directed fishery in excess of the processing limits established at § 679.20(a)(12)(v), unless the processing vessel meets the definition of a stationary floating processor at § 679.2.

(v) Deliver Pacific cod harvested in the Central GOA or adjacent waters parallel directed fishery to a vessel for processing, unless that vessel is endorsed as a CQE floating processor or stationary floating processor.

(5) *Stationary floating processor restrictions*—(i) Except as provided in paragraph (k)(3)(iv) of this section, to use a stationary floating processor to process Pacific cod at more than one single geographic location in the GOA during a fishing year if the Pacific cod was harvested in a Western or Central GOA directed fishery within Federal reporting areas 610, 620, or 630.

(ii) Operate as a stationary floating processor and as a catcher/processor during the same calendar year in the GOA.

(iii) Operate as a stationary floating processor and as a CQE floating processor or mothership during the same calendar year in the GOA.

(6) *Parallel fisheries.* Use a vessel designated or required to be designated on an FFP to catch and process Pacific cod from waters adjacent to the GOA when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(12)(i)(A)(*2*) through (*6*) of this part for the Western GOA and § 679.20(a)(12)(i)(B)(*2*) through (*7*) of this part for the Central GOA unless:

(i) That non-trawl vessel is designated on both:

(A) An LLP license issued under § 679.4(k) of this part, unless that vessel is using jig gear and exempt from the LLP license requirement under § 679.4(k)(2)(iii) of this part. Each vessel required to have an LLP license must be designated with the following endorsements:

(*1*) The GOA area designation adjacent to the parallel waters fishery where the harvest occurred; and

(*2*) A Pacific cod endorsement.

(B) An FFP issued under § 679.4(b) of this part with the following endorsements:

(*1*) The GOA area designation;

(*2*) An operational type designation;

(*3*) A gear type endorsement; and

(*4*) A Pacific cod gear type endorsement.

(ii) Or, that trawl vessel is designated on both:

(A) An LLP license issued under § 679.4(k) of this part endorsed for trawl gear with the GOA area designation adjacent to the parallel waters fishery where the harvest occurred, and

(B) An FFP issued under § 679.4(b) of this part with the following endorsements:

(*1*) The GOA area designation;

(*2*) An operational type designation;

(*3*) A trawl gear type endorsement; and

(*4*) A Pacific cod gear type endorsement.

(7) *Parallel fishery closures.* Use a vessel designated or required to be designated on an FFP to catch Pacific cod and retain from waters adjacent to the GOA when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(12)(i)(A)(*2*) through (*6*) of this part for the Western GOA and § 679.20(a)(12)(i)(B)(*2*) through (*7*) of this part for the Central GOA if directed fishing for Pacific cod is not open.

* * * * *

(k) * * *

(1) * * *

(iv) *Processing GOA groundfish*—(A) Use a listed AFA catcher/processor to process any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

(B) Use a listed AFA catcher/processor as a stationary floating processor for Pacific cod in the GOA and a catcher/processor during the same year.

* * * * *

(2) * * *

(ii) *Processing GOA groundfish.* Use a listed AFA mothership as a stationary floating processor for Pacific cod in the GOA and a mothership during the same year.

* * * * *

6. In § 679.20,

a. Revise paragraphs (a)(6)(ii), (a)(12), (b)(2)(ii), (c)(4)(ii); and

b. Add paragraphs (c)(4)(iii) and (c)(7) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(6) * * *

(ii) *Eastern GOA Regulatory Area Pacific cod.* The apportionment of Pacific cod in the Eastern GOA Regulatory Area will be allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component and 10 percent to vessels harvesting Pacific cod for processing by the offshore component.

* * * * *

(12) *GOA Pacific cod TAC*—(i) *Seasonal allowances by sector.* The Western and Central GOA Pacific cod TACs will be seasonally apportioned to each sector such that: 60 percent of the TAC is apportioned to the A season and 40 percent of the TAC is apportioned to the B season, as specified in § 679.23(d)(3).

(A) *Western GOA Regulatory Area—Jig sector.* A portion of the annual Pacific cod TAC will be allocated to vessels with an FFP that use jig gear, as determined in the annual harvest specification under paragraph (c)(7) of this section, before TAC is apportioned among other non-jig sectors. Other Pacific cod sector allowances are apportioned after allocation to the jig sector based on gear type and operation type as follows:

Sector	Gear type	Operation type	Seasonal allowances	
			A season	B season
(*1*)	Hook-and-Line	Catcher vessel	0.70%	0.70%
(*2*)	Hook-and-Line	Catcher/Processor	10.90%	8.90%
(*3*)	Trawl	Catcher vessel	27.70%	10.70%

Sector	Gear type	Operation type	Seasonal allowances	
			A season	B season
(*4*)	Trawl	Catcher/Processor	0.90%	1.50%
(*5*)	Pot	Catcher Vessel and Catcher/Processor	19.80%	18.20%
(*6*)	Nontrawl	Any	0.00%	0.00%

(B) *Central GOA Regulatory Area—Jig sector.* A portion of the annual Pacific cod TAC will be allocated to vessels with an FFP that use jig gear, as determined in the annual harvest specification under paragraph (c)(*7*) of this section, before TAC is apportioned among other non-jig sectors. Other Pacific cod sector allowances are apportioned after allocation to the jig sector based on gear type, operation type, and length overall as follows:

Sector	Gear type	Operation type	Length overall in feet	Seasonal allowances	
				A season	B season
(*1*)	Hook-and-Line	Catcher vessel	<50	9.31552%	5.28678%
(*2*)	Hook-and-Line	Catcher vessel	≥50	5.60935%	1.09726%
(*3*)	Hook-and-Line	Catcher/Processor	Any	4.10684%	0.99751%
(*4*)	Trawl	Catcher vessel	Any	21.13523%	20.44888%
(*5*)	Trawl	Catcher/Processor	Any	2.00334%	2.19451%
(*6*)	Pot	Catcher Vessel and Catcher/Processor	Any	17.82972%	9.97506%
(*7*)	Nontrawl	Any	Any	0.00%	0.00%

(ii) *Reapportionment of TAC*—(A) The Regional Administrator may apply any underage or overage of Pacific cod harvest by each sector from one season to the subsequent season. In adding or subtracting any underages or overages to the subsequent season, the Regional Administrator shall consider the incidental catch and any catch in the directed fishery by each sector.

(B) Any portion of the hook-and-line, trawl, pot, or jig sector allocations determined by the Regional Administrator to remain unharvested during the remainder of the fishery year will be added to the catcher vessel sectors first. The Regional Administrator shall consider the capability of gear groups and sectors to harvest the reallocated amount of Pacific cod when reapportioning Pacific cod to other sectors.

(iii) *Catch accounting*—(A) Incidental Pacific cod harvested between the closure of the A season and opening of the B season shall be deducted from the B season TAC apportionment for that sector.

(B) Each license holder that is assigned an LLP license with a catcher/processor operation type endorsement that is not assigned a catcher vessel operation type endorsement under the provisions at § 679.4(k)(10)(vii)(A) and (B) shall have all incidental and direct catch of Pacific cod deducted from the catcher/processor sector allocation and gear type designation corresponding to the gear used by that vessel.

(C) Holders of catcher/processor licenses assigned a Western GOA CV endorsement, under the provisions at § 679.4(k)(10)(vii)(A) and (B), shall have all incidental and direct catch of Pacific cod in the Western GOA deducted from the CV sector's allocation and gear type designation corresponding the gear used by that vessel in the Western GOA.

(D) Holders of C/P licenses eligible to, and electing to receive a Central CV endorsement, under the provisions at § 679.4(k)(10)(vii)(A) and (B), shall have all incidental and direct catch of Pacific cod in the Central GOA deducted from the CV sector's allocation and gear type designation corresponding the gear used by that vessel in the Central GOA.

(E) NMFS shall determine the length overall of a vessel operating in the Central GOA based on the length overall designated on the FFP assigned to that vessel.

(iv) *Processing caps for FFP licensed vessels.* In the Western GOA, no more than 2 percent of the total Pacific cod TAC allocated to the Western GOA regulatory area can be delivered for processing to vessels operating under the authority of an FFP.

(v) *Processing caps for FPP licensed vessel operating as CQE floating processors.* Harvesting vessels may deliver Pacific cod harvested in the directed Pacific cod TAC fishery, if the processing vessel receiving the Pacific cod—

(A) Does not meet the definition of a stationary floating processor at § 679.2;

(B) Is operating under the authority of an FPP license endorsed as a CQE floating processor;

(C) Is located within the marine municipal boundaries of a CQE community in the State waters adjacent to the Central or Western GOA as described in Table 21 to this part; and

(D) The total amount of Pacific cod received or processed by all CQE floating processors does not exceed—

(*1*) 3 percent of the total Western GOA Pacific cod TAC; or

(*2*) 3 percent of the total Central GOA Pacific cod TAC.

* * * * *

(b) * * *

(2) * * *

(ii) *Pacific cod reapportionment.* Any amounts of the GOA reserve that are reapportioned to the GOA Pacific cod fishery as provided by paragraph (b) of this section must be apportioned in the same proportion specified in paragraphs (a)(6)(ii) and (a)(12)(i) of this section.

* * * * *

(c) * * *

(4) * * *

(ii) *GOA pollock.* The annual harvest specifications will specify the allocation of GOA pollock for processing by the inshore component in the GOA and the offshore component in the GOA, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(6) of this section.

(iii) *Eastern GOA Pacific cod.* The annual harvest specifications will specify the allocation of Eastern GOA Pacific cod for processing by the inshore component and the offshore component, and any seasonal allowances thereof, as authorized under paragraph (a)(6) of this section.

* * * * *

(*7*) *Western and Central GOA Pacific cod allocations.* The proposed and final harvest specifications will specify the allocation of GOA Pacific cod among gear types and any seasonal allowances

thereof, as authorized under paragraph (a)(12) of this section.

* * * * *

7. In § 679.21,

a. Remove paragraph (d)(4)(iii)(B);

b. Redesignate paragraph (d)(4)(iii)(C) as paragraph (d)(4)(iii)(B); and

c. Revise newly redesignated paragraph (d)(4)(iii)(B), and paragraphs (d)(5)(iv) and (d)(7)(ii), to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(4) * * *

(iii) * * *

(B) *Other hook-and-line fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of groundfish and is not a demersal shelf rockfish fishery defined under paragraph (d)(4)(iii)(A) of this section, as follows—

(*1*) Catcher vessels using hook-and-line gear will be apportioned part of the GOA halibut PSC limit in proportion to the total Western and Central GOA Pacific cod allocations, where X is equal to annual TAC, as follows—

$$Total\ HAL\ PSC\ limit\ mt \times \frac{\left(1.4\%(\mathbf{X}_{WGOA}) + 21.3\%(\mathbf{X}_{CGOA})\right)}{\left((19.8\% + 1.4\%)(\mathbf{X}_{WGOA})\right) + \left((5.1\% + 21.3\%)(\mathbf{X}_{CGOA})\right)}$$

(*2*) Catcher/processors using hook-and-line gear will be apportioned part of the GOA halibut PSC limit in proportion to the total Western and Central GOA Pacific cod allocations, where X is equal to annual TAC, as follows—

$$Total\ HAL\ PSC\ limit\ mt \times \frac{\left(19.8\%(\mathbf{X}_{WGOA}) + 5.1\%(\mathbf{X}_{CGOA})\right)}{\left((19.8\% + 1.4\%)(\mathbf{X}_{WGOA})\right) + \left((5.1\% + 21.3\%)(\mathbf{X}_{CGOA})\right)}$$

(*3*) No later than November 1, any halibut PSC limit allocated under paragraph (d)(4)(iii)(B) of this section not projected by the Regional Administrator to be used by one of the hook-and-line sectors during the remainder of the fishing year will be made available to the other sector.

(5) * * *

(iv) *Seasonal apportionment exceeded.* If a seasonal apportionment of a halibut PSC limit specified for trawl, hook-and-line, pot gear, and/or operational type is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year.

* * * * *

(7) * * *

(ii) *Hook-and-line fisheries.* If, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the three hook-and-line gear and operational type fishery categories listed under paragraph (d)(4)(iii) of this section will catch the halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (d)(1) of this section, NMFS will publish notification in the **Federal Register** closing the entire GOA or the applicable regulatory area, district, or operation type to directed fishing with hook-and-line gear for each species and/or species group that comprises that fishing category.

* * * * *

8. In § 679.23,

a. Remove and reserve paragraph (d)(4);

b. Revise paragraph (d)(3)(i) introductory text; and

c. Add paragraph (d)(3)(iii) to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(3) * * *

(i) *Hook-and-line or pot gear.* Subject to other provisions of this part, directed fishing for Pacific cod with hook-and-line or pot gear in the Western and Central GOA Regulatory Areas is authorized only during the following two seasons:

* * * * *

(iii) *Jig gear.* Subject to other provisions of this part, directed fishing for Pacific cod with jig gear in the Western and Central GOA Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10 or when the jig A season allocation is reached, whichever occurs first;

(B) *B season.* From 1200 hours, A.l.t., June 10 through 2400 hours, A.l.t., December 31 or when the jig B season allocation is reached, whichever occurs first.

(4) [Reserved]

* * * * *

9. In § 679.28,

a. Revise paragraphs (f)(6)(iii) and (f)(6)(iv); and

b. Add paragraph (f)(6)(v) to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) * * *

(iii) You operate a vessel required to be Federally permitted with non-pelagic trawl or dredge gear onboard in reporting areas located in the GOA or operate a Federally permitted vessel with non-pelagic trawl or dredge gear onboard in adjacent State waters;

(iv) When that vessel is required to use functioning VMS equipment in the Rockfish Program as described in § 679.7(n)(3); or

(v) You operate a vessel in Federal reporting areas 610, 620, or 630, and receive and process groundfish from other vessels.

* * * * *

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

10. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

11. In § 680.22, revise paragraph (d) introductory text to read as follows:

§ 680.22 Sideboard protections for GOA groundfish fisheries.

* * * * *

(d) *Determination of GOA groundfish sideboard ratios.* Sideboard ratios for each GOA groundfish species other than fixed-gear sablefish, species group, season, gear type, and area, for which annual specifications are made, are

established according to the following formulas:

* * * * *

[FR Doc. 2011–18317 Filed 7–25–11; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 76 Tuesday,

No. 143 July 26, 2011

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early Season Migratory Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2011–0014; 91200–1231–9BPP–L2]

RIN 1018–AX34

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2011–12 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons may open as early as September 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. These frameworks are necessary to allow State selections of specific final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions. This proposed rule also provides the final regulatory alternatives for the 2011–12 duck hunting seasons.

DATES: *Comments:* You must submit comments on the proposed early-season frameworks by August 5, 2011.

Meetings: The Service Migratory Bird Regulations Committee (SRC) will meet to consider and develop proposed regulations for late-season migratory bird hunting and the 2012 spring/summer migratory bird subsistence seasons in Alaska on July 27 and 28, 2011. All meetings will commence at approximately 8:30 a.m.

ADDRESSES: *Comments:* You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2011–0014.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–MB–2011–0014; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mailed or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Meetings: The SRC will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Dr., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2011

On April 8, 2011, we published in the **Federal Register** (76 FR 19876) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2011–12 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 8 proposed rule.

Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. Those headings are:

1. Ducks
   A. General Harvest Strategy
   B. Regulatory Alternatives
   C. Zones and Split Seasons
   D. Special Seasons/Species Management
   i. September Teal Seasons
   ii. September Teal/Wood Duck Seasons
   iii. Black Ducks
   iv. Canvasbacks
   v. Pintails
   vi. Scaup
   vii. Mottled Ducks
   viii. Wood Ducks
   ix. Youth Hunt
   x. Mallard Management Units
2. Sea Ducks
3. Mergansers
4. Canada Geese
   A. Special Seasons
   B. Regular Seasons
   C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-Tailed Pigeons
16. Doves
17. Alaska
18. Hawaii
19. Puerto Rico
20. Virgin Islands
21. Falconry
22. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

On June 22, 2011, we published in the **Federal Register** (76 FR 36508) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 22 supplement also provided detailed information on the 2011–12 regulatory schedule and announced the SRC and Flyway Council meetings.

This document, the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations, deals specifically with proposed frameworks for early-season regulations and the regulatory alternatives for the 2011–12 duck hunting seasons. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2011–12 season.

We have considered all pertinent comments received through June 30, 2011, on the April 8 and June 22, 2011, rulemaking documents in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 16, 2011.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 22–23, 2011, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2011–12 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl.

Participants at the previously announced July 27–28, 2011, meetings will review information on the current status of waterfowl and develop recommendations for the 2011–12 regulations pertaining to regular

waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit comments on the matters discussed.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Waterfowl Breeding and Habitat Survey

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft, helicopters, and ground crews and encompass principal breeding areas of North America, covering an area over 2.0 million square miles. The traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Overall, habitat conditions during the 2011 Waterfowl Breeding Population and Habitat Survey were characterized by average to above-average moisture and a normal winter and spring across the entire traditional and eastern survey areas. The exception was a portion of the west-central traditional survey area that had received below-average moisture. The total pond estimate (Prairie Canada and United States combined) was 8.1 ± 0.2 million. This was 22 percent above the 2010 estimate of 6.7 ± 0.2 million ponds, and 62 percent above the long-term average of 5.0 ± 0.03 million ponds.

Traditional Survey Area (U.S. and Canadian Prairies and Parklands)

Conditions across the Canadian Prairies were greatly improved relative to last year. Building on excellent conditions from 2010 in portions of southern Alberta, Saskatchewan, and Manitoba, the area of excellent conditions in the prairies expanded in 2011, including a region along the Alberta and Saskatchewan border that had been poor for the last 2 years. The 2011 estimate of ponds in Prairie Canada was 4.9 ± 0.2 million. This was 31 percent above last year's estimate (3.7 ± 0.2 million) and 43 percent above the 1955–2010 average (3.4 ± 0.03 million). As expected, residual water from summer 2010 precipitation remained in the Parklands and the majority of the area was classified as good. Fair to poor conditions, however, were observed in the Parklands of Alberta.

Wetland numbers and conditions were excellent in the U.S. prairies. The 2011 pond estimate for the north-central U.S. was 3.2 ± 0.1 million, which was similar to last year's estimate (2.9 ± 0.1 million) and 102 percent above the 1974–2010 average (1.6 ± 0.02 million). The eastern U.S. prairies benefitted from abundant moisture in 2010 and the entire U.S. prairies experienced above-average winter and spring precipitation in 2010 and 2011, resulting in good to excellent conditions across nearly the entire region. The western Dakotas and eastern Montana, which were extremely dry in 2010, improved from fair to poor in 2010 to good to excellent in 2011. Further, the abundant moisture and delayed farming operations in the north-central U.S. and southern Canadian prairies likely benefitted early-nesting waterfowl species.

Bush (Alaska, Northern Manitoba, Northern Saskatchewan, Northwest Territories, Yukon Territory, Western Ontario)

In the bush regions of the traditional survey area (Northwest Territories, northern Manitoba, northern Saskatchewan, and western Ontario), spring breakup was late in 2011. However, a period of warm, fair weather just prior to the survey, greatly accelerated ice-out. Habitats improved from 2010 across most of northern Saskatchewan and Manitoba as a result of average to above-average summer and fall precipitation in 2010. Habitat conditions in the Northwest Territories and Alaska were classified as good in 2011. Dry conditions in the boreal forest of Alberta in 2010 persisted into 2011 as habitat conditions were again rated as fair to poor. The dry conditions in this region contributed to numerous forest fires during the 2011 survey.

Eastern Survey Area

In the eastern survey area, winter temperatures were above average and precipitation was below average over most of the region, with the exception of the Maritimes and Maine, which had colder than normal temperatures and above-average precipitation. Despite regional differences in winter conditions, above-average spring precipitation recharged deficient wetlands, subsequently providing good to excellent production habitat across the region. The boreal forest and Canadian Maritimes of the eastern survey area continued to have good to excellent habitat conditions in 2011. Habitat conditions in Ontario and southern Quebec improved from poor to fair in 2010 to good to excellent. Northern sections of the eastern survey area continued to remain in good to excellent conditions in 2011.

Status of Teal

The estimate of blue-winged teal from the traditional survey area is 8.9 million. This record-high count represents a 41.0 percent increase from 2010, and is 91 percent above the 1955–2010 average.

Sandhill Cranes

Compared to increases recorded in the 1970s, annual indices to abundance of the Mid-Continent Population (MCP) of sandhill cranes have been relatively stable since the early 1980s. The spring 2011 index for sandhill cranes in the Central Platte River Valley, Nebraska, uncorrected for visibility bias, was 363,356 birds. The photo-corrected, 3-year average for 2008–10 was 600,892 cranes, which is above the established population-objective range of 349,000–472,000 cranes.

All Central Flyway States, except Nebraska, allowed crane hunting in portions of their States during 2010–11. An estimated 8,738 hunters participated in these seasons, which was 10 percent higher than the number that participated in the previous season. Hunters harvested 18,727 MCP cranes in the U.S. portion of the Central Flyway during the 2010–11 seasons, which was 23 percent higher than the estimated harvest for the previous year and 29 percent higher than the long-term average. The retrieved harvest of MCP cranes in hunt areas outside of the Central Flyway (Arizona, Pacific Flyway portion of New Mexico, Minnesota, Alaska, Canada, and Mexico combined) was 15,025 birds during 2010–11. The preliminary estimate for the North American MCP sport harvest, including crippling losses, was 38,561 birds, which was a 51 percent increase from the previous year's estimate. The long-term (1982–2008) trends for the MCP indicate that harvest has been increasing at a higher rate than population growth.

The fall 2010 pre-migration survey for the Rocky Mountain Population (RMP) resulted in a count of 21,064 cranes. The 3-year average was 20,847 sandhill cranes, which is within the established population objective of 17,000–21,000 for the RMP. Hunting seasons during 2010–11 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming resulted in a harvest of 1,336 RMP cranes, a 4 percent decrease from the record-high harvest of 1,392 in 2009–10.

The Lower Colorado River Valley Population (LCRVP) survey results indicate a slight increase from 2,264 birds in 2010 to 2,415 birds in 2011. However, despite this slight increase, the 3-year average fell to 2,360 LCRVP cranes, which is below the population objective of 2,500.

The Eastern Population (EP) rebounded from near extirpation in the late 1800s to almost 30,000 cranes by 1996. In the fall of 2010, the estimate of EP cranes was approximately 50,000 birds. As a result of this increase and their range expansion, the Atlantic and Mississippi Flyway Councils developed a cooperative management plan for this population and criteria have been developed describing when hunting seasons can be opened. Kentucky has proposed to initiate the first hunting season on this population in the 2011–12 season (see 9. Sandhill Cranes section for further discussion).

Woodcock

Singing-ground and Wing-collection surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). The Singing-ground Survey is intended to measure long-term changes in woodcock population levels. Singing-ground Survey data for 2011 indicate that the number of singing male woodcock in the Eastern and Central Management Regions were unchanged from 2010. There were no significant 10-year trends in woodcock heard in the Eastern or Central Management Regions during 2001–2011, which marks the eighth consecutive year that the 10-year trend estimate for the Eastern Region was stable, while the trend in the Central Region returned to being not statistically significant after being negative last year. There were long-term (1968–2011) declines of 1.0 percent per year in both management regions.

The Wing-collection Survey provides an index to recruitment. Wing-collection Survey data indicate that the 2010 recruitment index for the U.S. portion of the Eastern Region (1.5 immatures per adult female) was 1.2 percent lower than the 2009 index, and 10.2 percent lower than the long-term (1963–2009) average. The recruitment index for the U.S. portion of the Central Region (1.6 immatures per adult female) was 30.2 percent above the 2009 index and 2.1 percent below the long-term (1963–2009) average.

Band-tailed Pigeons

Two subspecies of band-tailed pigeon occur north of Mexico, and they are managed as two separate populations in the United States: the Interior Population and the Pacific Coast Population. Information on the abundance and harvest of band-tailed pigeons is collected annually in the United States and British Columbia. Abundance information comes from the Breeding Bird Survey (BBS) and, for the Pacific Coast Population, the BBS and the Mineral Site Survey (MSS). Annual counts of Interior band-tailed pigeons seen and heard per route have declined since implementation of the BBS in 1968. No statistically significant trends in abundance are evident during the recent 5- and 10-year periods. The 2010 harvest of Interior band-tailed pigeons was estimated to be 5,000 birds.

BBS counts of Pacific Coast band-tailed pigeons seen and heard per route also have declined since 1968, but trends in abundance during the recent 5- and 10-year periods were not significant. The MSS, however, provided evidence that abundance decreased during the recent 5- and 7-year (since survey implementation) periods. The 2010 estimate of harvest for Pacific Coast band-tailed pigeons was 18,400 birds.

Mourning Doves

The Mourning Dove Call-count Survey (CCS) data is analyzed within a Bayesian hierarchical modeling framework, consistent with analysis methods for other long-term point count surveys such as the American Woodcock Singing-ground Survey and the North American Breeding Bird Survey. According to the analysis of the CCS, there was no trend in counts of mourning doves heard over the most recent 10 years (2002–11) in the Eastern Management Unit. There was a negative trend in mourning doves heard for the Central and Western Management Units. Over the 46-year period, 1966–2011, the number of mourning doves heard per route decreased in all three dove management units. The number of doves seen per route was also collected during the CCS. For the past 10 years, there was no trend in doves seen for the Central and Western Management Units; however, there was evidence of an increasing trend in the Eastern Management Unit. Over 46 years, there was of a positive trend in doves seen in the Eastern Management Unit, and declining trends were indicated for the Central and Western Management Units. The preliminary 2010 harvest estimate for the United States was 17,230,400 mourning doves.

White-Winged Doves

Two states harbor substantial populations of white-winged dove population: Arizona and Texas. California and New Mexico have much smaller populations. The Arizona Game and Fish Department monitors white-winged dove populations by means of a CCS to provide an annual index to population size. It runs concurrently with the Service's Mourning Dove CCS. The index of mean number of white-winged doves heard per route from this survey peaked at 52.3 in 1968, but then declined until about 2000. The index has stabilized at around 25 doves per route in the last few years; in 2011, the mean number of doves heard per route was 24.4. Arizona Game and Fish also historically monitored white-winged dove harvest. Harvest of white-winged doves in Arizona peaked in the late 1960s at approximately 740,000 birds, and has since declined and stabilized at around 100,000 birds; the preliminary 2010 Migratory Bird Harvest Information Program (HIP) estimate of harvest was 84,900 birds.

In Texas, white-winged doves continue to expand their breeding range. Nesting by white-winged doves has been recorded in most counties, with new colonies recently found in east Texas. Nesting is essentially confined to urban areas, but appears to be expanding to exurban areas. Concomitant with this range expansion has been a continuing increase in white-winged dove abundance. A new distance-based sampling protocol was implemented for Central and South Texas in 2007, and has been expanded each year. In 2010, 4,650 points were surveyed statewide and the urban population of breeding white-winged doves was estimated at 4.6 million. Current year's survey data are being analyzed and abundance estimates will be available later this summer. Additionally, the Texas Parks and Wildlife Department has an operational white-winged dove banding program and has banded 52,001 white-winged doves from 2006 to 2010. The estimated harvest of white-wings in Texas in the 2010 season was 1,436,800 birds. The Texas Parks and Wildlife Department continues to work to improve the scientific basis for management of white-winged doves.

In California, Florida, Louisiana, and New Mexico available BBS data indicate an increasing trend in the population indices between 1966 and 2010. According to HIP surveys, the preliminary harvest estimates were 78,200 white-winged doves in California, 6,200 in Florida, 4,600 in Louisiana, and 29,500 in New Mexico.

White-Tipped Doves

White-tipped doves occur primarily south of the United States–Mexico border; however, the species does occur in Texas. Monitoring information is presently limited. White-tipped doves are believed to be maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. Distance-based sampling procedures implemented in Texas are also providing limited information on white-tipped dove abundance. Texas is working to improve the sampling frame to include the rural Rio Grande corridor in order to improve the utility of population indices. Annual estimates for white-tipped dove harvest in Texas average between 3,000 and 4,000 birds.

Review of Public Comments

The preliminary proposed rulemaking (April 8 **Federal Register**) opened the public comment period for migratory game bird hunting regulations and announced the proposed regulatory alternatives for the 2011–12 duck hunting season. Comments concerning early-season issues and the proposed alternatives are summarized below and numbered in the order used in the April 8 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which we received written comments are included. Consequently, the issues do not follow in consecutive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 8 **Federal Register** document.

General

Written Comments: An individual commenter protested the entire migratory bird hunting regulations process, the killing of all migratory birds, and the lack of accepting electronic public comments.

Service Response: Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we believe that the hunting seasons provided herein are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received as public comment. While there are problems inherent with any type of representative management of public-trust resources, we believe that the Flyway-Council system of migratory bird management has been a longstanding example of State-Federal cooperative management since its establishment in 1952. However, as always, we continue to seek new ways to streamline and improve the process.

Regarding the comment concerning our acceptance, or lack thereof, of electronic public comments, we do accept electronic comments filed through the official Federal eRulemaking portal (*http://www.regulations.gov*). Public comment methods are identified and listed above under **ADDRESSES.**

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season lengths, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

Council Recommendations: The Mississippi Flyway Council recommended that regulations changes be restricted to one step per year, both when restricting as well as liberalizing hunting regulations.

Service Response: As we stated in the April 8 **Federal Register,** we intend to continue use of Adaptive Harvest Management (AHM) to help determine appropriate duck-hunting regulations for the 2011–12 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts, as well as providing a mechanism for reducing that uncertainty over time. The current AHM protocol is used to evaluate four alternative regulatory levels based on the population status of mallards and their breeding habitat (*i.e.,* abundance of ponds) (special hunting restrictions are enacted for certain species, such as canvasbacks, black ducks, scaup, and pintails).

As we previously stated regarding incorporation of a one-step constraint into the AHM process (73 FR 50678, August 27, 2008), this proposal was addressed by the AHM Task Force of the Association of Fish and Wildlife Agencies (AFWA) in its report and recommendations. Because there is no consensus on behalf of the Flyway Councils on how to modify the regulatory alternatives, we believe that the new Supplemental Environmental Impact Statement for the migratory bird hunting program (see NEPA Consideration section in the April 8 **Federal Register**) is an appropriate venue for considering such changes in a more comprehensive manner that involves input from all Flyways.

We will propose a specific regulatory alternative for each of the Flyways during the 2011–12 season after survey information becomes available later this summer. More information on AHM is located at *http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/AHM/AHM-intro.htm.*

B. Regulatory Alternatives

Council Recommendations: The Mississippi and Central Flyway Councils recommended that regulatory alternatives for duck hunting seasons remain the same as those used in 2010.

Service Response: The regulatory alternatives proposed in the April 8 **Federal Register** will be used for the 2011–12 hunting season (see accompanying table at the end of this proposed rule for specifics). In 2005, the AHM regulatory alternatives were modified to consist only of the maximum season lengths, framework dates, and bag limits for total ducks and mallards. Restrictions for certain species within these frameworks that are not covered by existing harvest strategies will be addressed during the late-season regulations process. For those species

with specific harvest strategies (canvasbacks, pintails, black ducks, and scaup), those strategies will again be used for the 2011–12 hunting season.

C. Zones and Split Seasons

Council Recommendations: The Atlantic Flyway Council recommended allowing States two periods for selecting their zone and split options: spring 2011 for currently offered options, and spring 2012 for possible additional available options.

The Mississippi Flyway Council urged us to provide new options for zones/split-season criteria (*i.e.,* three zones with two splits or four zones) for use during the 2011–12 regulations cycle season (see the April 8 **Federal Register** for a full discussion). They note, however, that some States may not be able to use these new criteria even if they are approved this spring because of their internal regulations-setting process. Thus, they request extending the open season for States to select zone/split-season configurations through the 2012 regulations cycle.

The Central and Pacific Flyway Councils recommended extending the current open season for States to select regular season zone/split configurations for 2011–15 through June 2012.

Written Comments: The Mississippi and Central Flyway Councils and the States of Colorado, Illinois, Kansas, Nebraska, New York, Wisconsin and Wyoming expressed their support for our April 8 proposal to modify the zones and split season guidelines to allow up to four zones (no splits) and up to three zones with two splits, including all grandfathered arrangements. Both the Councils and States supported the extension of the open season for State selections of zone and split season configurations into the 2012–13 regulatory cycle. There was also widespread support for the creation of a Human Dimensions Working Group that is capable of advancing informed decision-making frameworks for explicitly considering human dimensions aspects of waterfowl management issues. The States appreciated our efforts to assess the potential impacts of changes in the criteria on duck harvest, and believed that such impacts would be minimal.

Six non-governmental organizations from Illinois and 106 individuals from Illinois, Ohio, and Wisconsin expressed support for the Flyway Councils' recommended changes to the guidelines. Twenty individuals did not support changing the guidelines, while four individuals supported the abolishment of zone and split season criteria altogether.

Service Response: As we discussed in the April 8 **Federal Register,** we proposed new guidelines for duck zones and split seasons for use by States in setting their seasons for the 2011–15 hunting seasons. We also prepared a draft Environmental Assessment (EA) on the proposed zone and split season guidelines and provided a brief summary of the anticipated impacts of the preferred alternative with regard to the guidelines. Specifics of each of the four alternatives we analyzed can be found on our Web site at *http://www.fws.gov/migratorybirds*, or at *http://www.regulations.gov*. The comment period on the EA closed on May 15, 2011.

We remain supportive of the Flyway Councils' desire to expand the existing zone and split season criteria, but note that the adequacy of the National Flyway Council's human dimensions study design that we required last year (75 FR 58250, September 23, 2010) as part of our initial intent and proposal still does not meet our expectations. Thus, the Councils and the Service have committed to form a smaller working group to help resolve these differences, and we will consider a revised study proposal as soon as it is available. Assuming an acceptable study plan can be agreed upon, we will consider offering the expanded zone/split criteria to States in both the current year's regulation cycle and again in the 2012–13 regulations cycle.

D. Special Seasons/Species Management

i. Special Teal Seasons

Regarding the regulations for this year, utilizing the criteria developed for the teal season harvest strategy, this year's estimate of 8.9 million blue-winged teal from the traditional survey area indicates that a 16-day September teal season in the Atlantic, Central, and Mississippi Flyways is appropriate for 2011.

ix. Youth Hunt

Council Recommendations: The Atlantic Flyway Council recommended that we remove the criteria for youth hunting days to be 2 consecutive hunting days and allow the 2 days to be taken singularly or consecutively outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate.

Service Response: We concur with the Atlantic Flyway Council's recommendation to allow States to offer 2 youth hunt days in addition to their regular seasons, with no requirement that the youth hunts be held on consecutive hunting days. Our intent in first establishing this special day of opportunity in 1996 (61 FR 49232, September 18, 1996) was to introduce youth to the concepts of ethical utilization and stewardship of waterfowl and other natural resources, encourage youngsters and adults to experience the outdoors together, and to contribute to the long-term conservation of the migratory bird resource. We stated then that we viewed the special youth hunting day as a unique educational opportunity, above and beyond the regular season, which helps ensure high-quality learning experiences for those youth indicating an interest in hunting. We further believed that the youth hunting day would help develop a conservation ethic in our youth and was consistent with the Service's responsibility to foster an appreciation for our nation's valuable wildlife resources. However, there have been few attempts to determine whether youth hunts have achieved their intended purpose. Thus, we request that when the Human Dimensions Working Group is formed, that it be charged with assessing the effectiveness of youth waterfowl hunts as a hunter recruitment tool. Until such an assessment has been conducted, we will not consider any further changes to the criteria for youth hunts.

x. Mallard Management Units

Council Recommendations: The Central Flyway Council recommended changes to the High Plains Mallard Management Unit boundary in Nebraska and Kansas for simplification and clarification of regulations enforcement.

Service Response: We do not support the modification of the boundary of the High Plains Mallard Management Unit in Kansas and Nebraska. While we appreciate the Council's desire for ways to improve enforcement, we note that the boundaries in those two States have been in place since the 1970s and are sufficiently clear for enforcement of waterfowl hunting regulations. Further, we do not believe sufficient biological information is available to warrant changes to the boundary at the scales proposed. However, if the Flyway Council believes the demographics of ducks have changed and may warrant a change in the boundary, we suggest that an assessment of data should be conducted that could inform a change at the Management Unit level.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the 10-day experimental season extension (September 16–25) of the special September Canada goose hunting season in Delaware become operational.

The Central Flyway Council recommended that we increase the daily bag limit framework from five to eight for North Dakota during the special early Canada goose hunting season in September.

The Pacific Flyway Council recommended increasing the daily bag limit in the Pacific Flyway portion of Colorado from three geese to four geese, and increasing the possession limit from six to eight birds during the special September season.

Service Response: We agree with the Atlantic Flyway Council's recommendation that Delaware's September Canada goose season become operational. As the Council notes in their recommendation, resident Canada geese remain overabundant in many areas of the Flyway. The current population exceeds approximately 1 million while the goal in the Atlantic Flyway Resident Canada Goose Management Plan is 650,000 geese. Approval of this season would be consistent with the current management plan. Specifically in Delaware, the resident Canada goose population has continued to increase with a 2010 population index of 10,880 birds, well above the breeding population goal of 1,000 birds. Further, results of the 3-year experimental extension (2008–10) demonstrated that the harvest during this season is comprised of predominately resident geese and meets the current criteria established for Special Canada Goose Seasons. Band recovery data also indicated that no direct recovery of Atlantic Population (AP)-banded geese occurred during the entire 3-year experimental timeframe. We concur that making the season operational would help maximize harvest of resident Canada geese within Delaware, with minimal to no additional impact to migrant geese, while also increasing hunting opportunities.

We also agree with the Central Flyway Council's request to increase the Canada goose daily bag limit in North Dakota. Last year, we increased the daily bag limit in South Dakota, Nebraska, Kansas, and Oklahoma during their special early Canada goose seasons (75 FR 52873, August 30, 2010). The Special Early Canada Goose hunting season is generally designed to reduce or control overabundant resident Canada geese populations. Increasing the daily bag limit from 5 to 8 geese may help North Dakota reduce or control existing high populations of resident Canada geese; currently in excess of 325,000 geese (May 2010 estimate) with a population objective of 60,000–100,000.

Regarding the increase in the daily bag limit in Colorado, we agree. As the Pacific Flyway Council notes in their recommendation, the 2010 Rocky Mountain Population (RMP) breeding population index (BPI) was 143,842, a 15 percent increase from the 2009 index of 124,684, but 10 percent below the 3-year average BPI of 160,434. Further, while the 2011 RMP Midwinter Index (MWI) of 124,427 showed a 17 percent decrease from the previous year's index of 149,831, and the 2011 RMP MWI was 7 percent below its running 3-year average of 133,312 geese, this total is still well above the level in the management plan which allows for harvest liberalization (80,000). Further, population index data and estimated harvest effects support increasing the bag and possession limits in Colorado. In the past 3 years, while counts from the spring breeding survey have stayed relatively stable, post-hunting indices collected as part of the mid-winter survey have increased. An increase in the daily bag limit is expected to result in minimal increases in Canada goose harvest rates.

B. Regular Seasons

Council Recommendations: The Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2011.

Service Response: We concur. Michigan, beginning in 1998, and Wisconsin, beginning in 1989, have opened their regular Canada goose seasons prior to the Flyway-wide framework opening date to address resident goose management concerns in these States. As we have previously stated (73 FR 50678, August 27, 2008), we agree with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway and will continue to consider the opening dates in both States as exceptions to the general Flyway opening date, to be reconsidered annually. We note that the most recent resident Canada goose estimate for the Mississippi Flyway was 1.61 million birds in 2010, which was 10 percent higher than the 2009 estimate, and well above the Flyway's population goal of 1.18 to 1.40 million birds.

9. Sandhill Cranes

Council Recommendations: The Mississippi Flyway Council recommended a 3-year experimental 30-day sandhill crane season for the Eastern Population (EP) of sandhill cranes in Kentucky beginning in the 2011–12 season.

The Central and Pacific Flyway Councils recommend using the 2011 Rocky Mountain Population (RMP) sandhill crane harvest allocation of 1,771 birds as proposed in the allocation formula described in the management plan for this population. The Councils also recommended the establishment of two new hunting areas for RMP greater sandhill crane hunting in Montana; the addition of Golden Valley County to an existing RMP sandhill crane hunting unit, and the establishment of a new RMP sandhill crane hunting unit in Broadwater County.

The Pacific Flyway Council recommended not allowing a limited hunt for Lower Colorado River Valley Population (LCRVP) Sandhill Cranes in Arizona during the 2011–12 hunting season. Survey results indicate the 3-year average population estimate is below the 2,500 birds required by the EA and management plan to hunt this population.

Written Comments: The International Crane Foundation (ICF) and an individual commented that no population modeling had been done for EP sandhill cranes and that the proposed harvest in Kentucky could consume a substantial portion of the productivity of the EP breeding crane population in the Upper Midwest. The ICF also believed that data on the origin of birds that would be harvested in Kentucky were incomplete. Finally, the ICF provided several comments regarding the development of the EP crane management plan.

The ICF and the Kentucky Resources Council (KRC) commented that the Kentucky proposal did not include details about the degree of public participation that would be sought in the decision regarding whether and how to hunt cranes; that sufficient public input had not be solicited to date; and that the Service should defer on the decision to hunt cranes.

Lastly, the KRC noted that the new Supplemental Environmental Impact Statement (EIS) for the migratory bird hunting program has not been finalized, and that given the significant scientific uncertainties associated with Kentucky's proposal, and the fact that there is a distinct possibility the sandhill crane hunt might result in the taking of endangered whooping cranes,

an EIS should be developed to evaluate a full range of reasonable management alternatives for EP sandhill cranes.

The Buckley Hills Audubon Society also expressed concern about the scientific uncertainty of the Kentucky proposal and for the potential taking of whooping cranes.

Service Response: Last year, the Atlantic and Mississippi Flyway Councils adopted a management plan for EP cranes. This year, Kentucky has submitted a crane hunt proposal to both Flyways that follows the hunt plan guidelines and calls for a 30-day season with a maximum harvest of 400 cranes. We support the Kentucky crane hunt proposal. Total anticipated harvest and crippling loss would be less than 1 percent of the current 3-year average population index for EP cranes (51,217 cranes), well below the level of harvest of other crane populations (*e.g.,* MCP harvest is 6.7 percent of the population size, while RMP is 4.9 percent).

Additionally, we prepared a draft EA on the hunting of EP sandhill cranes as allowed under the management plan. Specifics of the two alternatives we analyzed can be found on our Web site at *http://www.fws.gov/migratorybirds*, or at *http://www.regulations.gov*. Our EA outlines two different approaches for assessing the ability of the EP crane population to withstand the level of harvest contained in EP management plan: (1) The potential biological removal allowance method; and (2) a simple population model using fall survey data and annual survival rates. The EA concluded that the anticipated combined level of harvest and crippling loss in Kentucky could be sustained by the proposed hunt. Furthermore, population modeling indicated that any harvest below 2,000 birds would still result in a growing population of EP cranes.

With regard to the origin of cranes harvested in Kentucky, we note that EP cranes are managed as one population and that no monitoring at the sub-population level is required, or necessary, by the EP management plan. We believe that we have fulfilled our NEPA obligation with the preparation of an EA, and therefore an EIS is not required.

With regard to the potential taking of endangered whooping cranes, the season dates contained in the Kentucky proposal were chosen such that they would begin approximately 3 weeks after whooping cranes have normally migrated through the State, reducing the likelihood that sandhill crane hunters would encounter whooping cranes. We further point out that whooping cranes that migrate through Kentucky are part of the Experimental Nonessential Population of whooping cranes (NEP). In 2001, the Service announced its intent to reintroduce whooping cranes (*Grus americana*) into historic habitat in the eastern United States with the intent to establish a migratory flock that would summer and breed in Wisconsin, and winter in west-central Florida (66 FR 14107, March 9, 2001). We designated this reintroduced population as an NEP according to section 10(j) of the Endangered Species Act of 1973 (Act), as amended. Mississippi and Atlantic Flyway States within the NEP area maintain their management prerogatives regarding the whooping crane (66 FR 33903, June 26, 2001). They are not directed by the reintroduction program to take any specific actions to provide any special protective measures, nor are they prevented from imposing restrictions under State law, such as protective designations, and area closures.

We further note that the harvest of cranes in Kentucky will be controlled by a mandatory tagging and phone reporting system, which will ensure that the harvest objective of 400 birds is not exceeded. Additionally, the season would be closed early if the harvest objective is met before 30 days.

We also agree with the Central and Pacific Flyway Councils' recommendations on the RMP sandhill crane harvest allocation of 1,771 birds for the 2011–12 season, as outlined in the RMP sandhill crane management plan's harvest allocation formula. The objective for the RMP sandhill crane is to manage for a stable population index of 17,000–21,000 cranes determined by an average of the three most recent, reliable September (fall pre-migration) surveys. Additionally, the RMP sandhill crane management plan allows for the regulated harvest of cranes when the population index exceeds 15,000 cranes. In 2010, 21,064 cranes were counted in the September survey and the most recent 3-year average for the RMP sandhill crane fall index is 20,847 birds. Both of the new hunt areas in Montana are allowed under the management plan.

Regarding the proposal to discontinue the limited hunt for LCRVP cranes in Arizona this year, we agree. In 2007, the Pacific Flyway Council recommended, and we approved, the establishment of a limited hunt for the LCRVP sandhill cranes in Arizona (72 FR 49622, August 28, 2007). However, due to problems that year with the population inventory on which the LCRVP hunt plan is based, the Arizona Game and Fish Department chose to not conduct the hunt in 2007, and sought approval from the Service again in 2008, to begin conducting the hunt. We subsequently again approved the limited hunt (73 FR 50678, August 27, 2008). Then, due to complications encountered with the proposed initiation of this new season occurring during litigation regarding opening new hunting seasons on Federal National Wildlife Refuges, the experimental limited hunt season was not opened in 2008. Thus, in 2009, the State of Arizona requested that 2009–12 be designated as the new experimental period and designated an area under State control where the experimental hunt would be conducted. Last year, Arizona did implement the planned limited hunt; however, no cranes were harvested.

This year, the LCRVP survey results indicate that the 3-year average of LCRVP cranes is below the population objective of 2,500. Thus, while we continue to support the 3-year experimental framework for this hunt, conditional on successful monitoring being conducted as called for in the Flyway hunt plan for this population, we concur with the Pacific Flyway Council that the hunt should not be held this year.

14. Woodcock

Council Recommendations: The Atlantic Flyway Council recommended adoption of the ''moderate'' season package of 45 days with a 3-bird daily bag limit in the Eastern Management Region for the 2011–12 season as outlined in the Interim American Woodcock Harvest Strategy (available at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html*). They also recommended that States previously allowed to zone for woodcock be allowed to continue that arrangement with the associated 20-percent penalty in season length (*i.e.,* 36 days in each of New Jersey's zones).

Service Response: Last year, following review and comment by the Flyway Councils and the public, we adopted an interim harvest strategy for woodcock beginning in the 2011–12 hunting season for a period of 5 years (2011–15) (75 FR 52873, August 30, 2010). Specifics of the interim harvest strategy can be found at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

As we stated last year, the interim harvest strategy provides a transparent framework for making regulatory decisions for woodcock season length and bag limit while we work to improve monitoring and assessment protocols for this species.

16. Mourning Doves

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended use of the ''moderate'' season framework for States within the Eastern Management Unit population of mourning doves resulting in a 70-day season and 15-bird daily bag limit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination.

The Mississippi and Central Flyway Councils recommend the use of the standard (or ''moderate'') season package of a 15-bird daily bag limit and a 70-day season for the 2011–12 mourning dove season in the States within the Central Management Unit. The Central Flyway Council also recommended that the opening date for the South Dove Zone in Texas be the Friday before the third Saturday in September.

The Pacific Flyway Council recommended use of the ''moderate'' season framework for States in the Western Management Unit (WMU) population of mourning doves, which represents no change from last year's frameworks. The Council also recommended combining mourning and white-winged dove season frameworks into a single framework, and allowing an aggregate bag in all Pacific Flyway States in the WMU.

Service Response: In 2008, we accepted and endorsed the interim harvest strategies for the Central, Eastern, and Western Management Units (73 FR 50678, August 27, 2008). As we stated then, the interim mourning dove harvest strategies are a step towards implementing the Mourning Dove National Strategic Harvest Plan (Plan) that was approved by all four Flyway Councils in 2003. The Plan represents a new, more informed means of decision-making for dove harvest management besides relying solely on traditional roadside counts of mourning doves as indicators of population trend. However, recognizing that a more comprehensive, national approach would take time to develop, we requested the development of interim harvest strategies, by management unit, until the elements of the Plan can be fully implemented. In 2009, the interim harvest strategies were successfully employed and implemented in all three Management Units (74 FR 36870, July 24, 2009).

This year, based on the interim harvest strategies and current population status, we agree with the recommended selection of the ''moderate'' season frameworks for doves in the Eastern, Central, and Western Management Units.

Regarding the Central Flyway Council's recommendation to move the opening date for the South Dove Zone in Texas from the Saturday nearest September 20 (but not earlier than September 17) to the Friday before the third Saturday in September, we do not support the Council's recommendation. We remain concerned about the potential impact on the recruitment of late-nesting doves of opening of hunting seasons earlier than the State currently does. We believe that additional biological information should be collected to assess potential biological impacts before making additional changes to the opening date.

Lastly, we concur with the Pacific Flyway Council's recommendation to combine mourning and white-winged dove season frameworks into a single framework, and allow an aggregate bag in all Pacific Flyway States in the WMU. We believe this change will simplify the frameworks for use by the States when selecting seasons. Further, we have applied this change to all dove frameworks in all management units (see the Doves framework section of this proposed rule for further information).

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended removal of Canada goose daily bag limit restrictions within the overall dark goose daily bag limit in Units 9, 10, 17, and 18. In these Units, the dark goose limits would be 6 geese per day, with 12 geese in possession.

Service Response: We concur with the proposed removal of the Canada goose daily bag limit restrictions within the overall dark goose daily bag limit. We agree with the Council that cackling geese restrictions on primary breeding and staging areas are not warranted given recent reassessments of population data and the fact that Alaska's Units 9, 10, 17, and 18 have very little Canada goose sport harvest. We expect the harvest increase in Alaska will be small.

22. Falconry

Written Comments: An individual proposed adding a spring hunting season for falconers, primarily in March.

Service Response: Currently, we allow falconry as a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29. Such States may select an extended season for taking migratory game birds as long as the combined length of the extended season, regular season, and any special or experimental seasons does not exceed 107 days for any species or group of species in a geographical area. In addition, all such seasons must fall between September 1 and March 10, as stipulated in the Migratory Bird Treaty (Treaty).

We note that in those States that already experience 107-day seasons (*i.e.,* ducks in the Pacific Flyway), there is no opportunity for extended falconry seasons. Further, given the Treaty limitations, no hunting seasons may extend past March 10.

Public Comments

The Department of the Interior's policy is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgating final migratory game bird hunting regulations, we will consider all comments we receive. These comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov*. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will

summarize all comments we receive during the comment period and respond to them after the closing date in the preambles of any final rules.

Required Determinations

Based on our most current data, we are affirming our required determinations made in the proposed rule; for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see our April 8, 2011, proposed rule (76 FR 19876):

- National Environmental Policy Act;
- Endangered Species Act;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12866, 12988, 13175, 13132, and 13211.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2011–12 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a-j.

Dated: July 13, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2011–12 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2011, and March 10, 2012. These frameworks are summarized below.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Permits: For some species of migratory birds, the Service authorizes the use of permits to regulate harvest or monitor their take by sport hunters, or both. In many cases (*e.g.,* tundra swans, some sandhill crane populations), the Service determines the amount of harvest that may be taken during hunting seasons during its formal regulations-setting process, and the States then issue permits to hunters at levels predicted to result in the amount of take authorized by the Service. Thus, although issued by States, the permits would not be valid unless the Service approved such take in its regulations.

These Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take migratory birds at levels specified in the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferrable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Definitions

Dark geese: Canada geese, white-fronted geese, brant (except in Alaska, California, Oregon, Washington, and the Atlantic Flyway), and all other goose species, except light geese.

Light geese: snow (including blue) geese and Ross's geese.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited Statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 16 consecutive hunting days in the Atlantic, Mississippi, and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours

Atlantic Flyway—One-half hour before sunrise to sunset, except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 17). The daily bag and possession limits will be the same as those in effect last year but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 days per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Long-Tailed Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, Florida, Georgia, New Jersey, New York (Long Island Zone only), North Carolina, Rhode Island, and South Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 15 Canada geese.

Shooting Hours: One-half hour before sunrise to sunset, except that during any general season, shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota, where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Central Flyway

General Seasons

In Kansas, Nebraska, Oklahoma, South Dakota, and Texas, Canada goose seasons of up to 30 days during September 1–30 may be selected. In Colorado, New Mexico, North Dakota, Montana, and Wyoming, Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese, except in Kansas, Nebraska, North Dakota, Oklahoma, and South Dakota, where the bag limit may not exceed 8 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15. The daily bag limit is 4.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW Goose Management Zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season during the period September 1–15. The daily bag limit is 2, and the possession limit is 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese during the period September 1–15. This season is subject to the following conditions:

A. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

B. A daily bag limit of 2, with season and possession limits of 4, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Mississippi Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: A season not to exceed 37 consecutive days may be selected in the designated portion of northwestern Minnesota (Northwest Goose Zone).

Daily Bag Limit: 2 Sandhill cranes.

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Experimental Seasons in the Mississippi Flyway

Outside Dates: Between September 1 and January 31.

Hunting Seasons: A season not to exceed 30 consecutive days may be selected in Kentucky.

Daily Bag Limit: Not to exceed 2 daily and 2 per season.

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Mississippi Flyway Council.

Regular Seasons in the Central Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 consecutive days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils, with the following exceptions:

A. In Utah, 100 percent of the harvest will be assigned to the RMP quota;

B. In Arizona, monitoring the racial composition of the harvest must be conducted at 3-year intervals;

C. In Idaho, 100 percent of the harvest will be assigned to the RMP quota; and

D. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and the last Sunday in January (January 29) in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and the last Sunday in January (January 29) on clapper, king, sora, and Virginia rails.

Hunting Seasons: Seasons may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the 2 species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 24) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 45 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 36 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

For All States Except Texas

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas

Hunting Seasons and Daily Bag Limits: Not more than 70 days, with a daily bag limit of 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves.

Zoning and Split Seasons: Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see Special White-Winged Dove Area).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between the Friday nearest September 20 (September 23), but not earlier than September 17, and January 25.

C. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Special White-Winged Dove Area in Texas

In addition, Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 15 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and no more than 2 may be white-tipped doves.

Western Management Unit

Hunting Seasons and Daily Bag Limits

Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days, with a daily bag limit of 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning and white-winged doves in the aggregate.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-Goose Seasons Are Subject to the Following Exceptions

A. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16.

B. On Middleton Island in Unit 6, a special, permit-only Canada goose season may be offered. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

C. In Units 6–B, 6–C, and on Hinchinbrook and Hawkins Islands in Unit 6–D, a special, permit-only Canada goose season may be offered. Hunters must have all harvested geese checked

and classified to subspecies. The daily bag limit is 4 daily and 8 in possession. The Canada goose season will close in all of the permit areas if the total dusky goose (as defined above) harvest reaches 40.

D. In Units 9, 10, 17, and 18, dark goose limits are 6 per day, 12 in possession.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

A. All seasons are by registration permit only.

B. All season framework dates are September 1—October 31.

C. In Game Management Unit (GMU) 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

D. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

E. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swans per permit. No more than 1 permit may be issued per hunter per season.

F. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 20 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 10 may be Zenaida doves and 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Seasons: The season is closed on the white-crowned pigeon and the plain pigeon, which are protected by the Commonwealth of Puerto Rico.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves or pigeons.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29. These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29. Regular season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Louisiana

North Zone—That portion of the State north of a line extending east from the Texas border along State Highway 12 to U.S. Highway 190, east along U.S. 190 to Interstate Highway 12, east along Interstate 12 to Interstate Highway 10, then east along Interstate Highway 10 to the Mississippi border.

South Zone—The remainder of the State.

Mississippi

North Zone—That portion of the State north and west of a line extending west from the Alabama State line along U.S. Highway 84 to its junction with State Highway 35, then south along State Highway 35 to the Louisiana State line.

South Zone—The remainder of Mississippi.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas–Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio, southeast on State Loop 1604 to Interstate Highway 35, southwest on Interstate Highway 35 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to FM 649 in Randado; south on FM 649 to FM 2686; east on FM 2686 to FM 1017; southeast on FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—The remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—The remainder of the State.

Maryland

Eastern Unit—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; and that part of Anne Arundel County east of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State line.

Western Unit—Allegany, Baltimore, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties and that part of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County west of Route 3 and Route 301; and that part of Charles County west of Route 301 to the Virginia State line.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Eastern Long Island Goose Area (North Atlantic Population (NAP) High Harvest Area)—That area of Suffolk County lying east of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (Resident Population (RP) Area)—That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New

York-Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area)—That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington Counties; that portion of Bertie County north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor to the Hertford County line; and that portion of Northampton County that is north of U.S. 158 and east of NC 35.

Pennsylvania

Southern James Bay Population (SJBP) Zone—The area north of I–80 and west of I–79, including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck Zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

Vermont

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone—That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone—The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Arkansas

Early Canada Goose Area—Baxter, Benton, Boone, Carroll, Clark, Conway, Crawford, Faulkner, Franklin, Garland, Hempstead, Hot Springs, Howard, Johnson, Lafayette, Little River, Logan, Madison, Marion, Miller, Montgomery, Newton, Perry, Pike, Polk, Pope, Pulaski, Saline, Searcy, Sebastian, Sevier, Scott, Van Buren, Washington, and Yell Counties.

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone—That portion of the State outside the Northeast Canada Goose Zone and north of a line extending west from the Indiana border along Peotone-Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington-Peotone Road, west along Wilmington-Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff-Lorenzo Road, west along Pine Bluf-Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone—That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending west from the Indiana border along Interstate Highway 70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 156, west along Illinois Route 156 to A Road, north and west on A Road to Levee Road, north on Levee Road to the south shore of New Fountain Creek, west along the south shore of New Fountain Creek to the Mississippi River, and due west across the Mississippi River to the Missouri border.

South Zone—The remainder of Illinois.

Iowa

North Zone—That portion of the State north of U.S. Highway 20.

South Zone—The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone—Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; then south and east along County Road E2W to Highway 920; then north along Highway 920 to County Road E16; then east along County Road E16 to County Road W58; then south along County Road W58 to County Road E34; then east along County Road E34 to Highway 13; then south along Highway 13 to Highway 30; then east along Highway 30 to Highway 1; then south along Highway 1 to Morse Road in Johnson County; then east along Morse Road to Wapsi Avenue; then south along Wapsi Avenue to Lower West Branch Road; then west along Lower West Branch Road to Taft Avenue; then south along Taft Avenue to County Road F62; then west along County Road F62 to Kansas Avenue; then north along Kansas Avenue to Black Diamond Road; then west on Black Diamond Road to Jasper Avenue; then north along Jasper Avenue to Rohert Road; then west along Rohert Road to Ivy Avenue; then north along Ivy Avenue to 340th Street; then west along 340th Street to Half Moon Avenue; then north along Half Moon Avenue to Highway 6; then west along Highway 6 to Echo Avenue; then north along Echo Avenue to 250th Street; then east on 250th Street to Green Castle Avenue; then north along Green Castle Avenue to County Road F12; then west along County Road F12 to County Road W30; then north along County Road W30 to Highway 151; then north along the Linn-Benton County line to the point of beginning.

Des Moines Goose Zone—Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; then south along R38 to Northwest 142nd Avenue; then east along Northwest 142nd Avenue to Northeast 126th Avenue; then east along Northeast 126th Avenue to Northeast 46th Street; then south along Northeast 46th Street to Highway 931; then east along Highway 931 to Northeast 80th Street; then south along Northeast 80th Street to Southeast 6th Avenue; then west along Southeast 6th Avenue to Highway 65; then south and west along Highway 65 to Highway 69 in Warren County; then south along

Highway 69 to County Road G24; then west along County Road G24 to Highway 28; then southwest along Highway 28 to 43rd Avenue; then north along 43rd Avenue to Ford Street; then west along Ford Street to Filmore Street; then west along Filmore Street to 10th Avenue; then south along 10th Avenue to 155th Street in Madison County; then west along 155th Street to Cumming Road; then north along Cumming Road to Badger Creek Avenue; then north along Badger Creek Avenue to County Road F90 in Dallas County; then east along County Road F90 to County Road R22; then north along County Road R22 to Highway 44; then east along Highway 44 to County Road R30; then north along County Road R30 to County Road F31; then east along County Road F31 to Highway 17; then north along Highway 17 to Highway 415 in Polk County; then east along Highway 415 to Northwest 158th Avenue; then east along Northwest 158th Avenue to the point of beginning.

Cedar Falls/Waterloo Goose Zone—Includes those portions of Black Hawk County bounded as follows: Beginning at the intersection of County Roads C66 and V49 in Black Hawk County, then south along County Road V49 to County Road D38, then west along County Road D38 to State Highway 21, then south along State Highway 21 to County Road D35, then west along County Road D35 to Grundy Road, then north along Grundy Road to County Road D19, then west along County Road D19 to Butler Road, then north along Butler Road to County Road C57, then north and east along County Road C57 to U.S. Highway 63, then south along U.S. Highway 63 to County Road C66, then east along County Road C66 to the point of beginning.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; then west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; then north along the east boundary of Dahlgren Township to U.S. Highway 212; then west along U.S. Highway 212 to State Trunk Highway (STH) 284; then north on STH 284 to County State Aid Highway (CSAH) 10; then north and west on CSAH 10 to CSAH 30; then north and west on CSAH 30 to STH 25; then east and north on STH 25 to CSAH 10; then north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; then east on CSAH 2 to U.S. Highway 61; then south on U.S. Highway 61 to State Trunk Highway (STH) 97; then east on STH 97 to the intersection of STH 97 and STH 95; then due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; then along the U.S. Highway 52 to State Trunk Highway (STH) 57; then along STH 57 to the municipal boundary of Kasson; then along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; then along CSAH 13 to STH 30; then along STH 30 to U.S. Highway 63; then along U.S. Highway 63 to the south boundary of the State; then along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; then along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to I–94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Nebraska

September Canada Goose Unit—That part of Nebraska bounded by a line from

the Nebraska-Iowa State line west on U.S. Highway 30 to U.S. Highway 81, then south on U.S. Highway 81 to NE Highway 64, then east on NE Highway 64 to NE Highway 15, then south on NE Highway 15 to NE Highway 41, then east on NE Highway 41 to NE Highway 50, then north on NE Highway 50 to NE Highway 2, then east on NE Highway 2 to the Nebraska-Iowa State line.

North Dakota

Missouri River Canada Goose Zone—The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; then north on ND Hwy 6 to I–94; then west on I–94 to ND Hwy 49; then north on ND Hwy 49 to ND Hwy 200; then north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); then north on that section line to the southern shoreline to Lake Sakakawea; then east along the southern shoreline (including Mallard Island) of Lake Sakakawea to U.S. Hwy 83; then south on U.S. Hwy 83 to ND Hwy 200; then east on ND Hwy 200 to ND Hwy 41; then south on ND Hwy 41 to U.S. Hwy 83; then south on U.S. Hwy 83 to I–94; then east on I–94 to U.S. Hwy 83; then south on U.S. Hwy 83 to the South Dakota border; then west along the South Dakota border to ND Hwy 6.

Rest of State: Remainder of North Dakota.

South Dakota

Special Early Canada Goose Unit—Entire State of South Dakota *except* the Counties of Bennett, Gregory, Hughes, Lyman, Perkins, and Stanley; that portion of Potter County west of U.S. Highway 83; that portion of Bon Homme, Brule, Buffalo, Charles Mix, and Hyde County south and west of a line beginning at the Hughes-Hyde County line of SD Highway 34, east to Lees Boulevard, southeast to SD 34, east 7 miles to 350th Avenue, south to I–90, south and east on SD Highway 50 to Geddes, east on 285th Street to U.S. Highway 281, south on U.S. Highway 281 to SD 50, east and south on SD 50 to the Bon Homme-Yankton County boundary; that portion of Fall River County east of SD Highway 71 and U.S. Highway 385; that portion of Custer County east of SD Highway 79 and south of French Creek; that portion of Dewey County south of BIA Road 8, BIA Road 9, and the section of U.S. 212 east of BIA Road 8 junction.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone)—Pacific County.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

Maryland

Special Teal Season Area— Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; that part of Anne Arundel County east of Interstate 895, Interstate 97, and Route 3; that part of Prince Georges County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State Line.

Mississippi Flyway

Indiana

North Zone—That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone—That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone—That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone—That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, then east along U.S. Highway 30 to the Illinois border.

South Zone—The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area—Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone—That portion of the State west of U.S. 283.

Low Plains Early Zone—That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S.

36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; and southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone—The remainder of Kansas.

Nebraska

Special Teal Season Area—That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

High Plains—That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. Hwy. 183; south on U.S. Hwy. 183 to U.S. Hwy. 20; west on U.S. Hwy. 20 to NE Hwy. 7; south on NE Hwy. 7 to NE Hwy. 91; southwest on NE Hwy. 91 to NE Hwy. 2; southeast on NE Hwy. 2 to NE Hwy. 92; west on NE Hwy. 92 to NE Hwy. 40; south on NE Hwy. 40 to NE Hwy. 47; south on NE Hwy. 47 to NE Hwy. 23; east on NE Hwy. 23 to U.S. Hwy. 283; and south on U.S. Hwy. 283 to the Kansas–Nebraska border.

Low Plains Zone 1—That portion of Dixon County west of NE Hwy. 26E Spur and north of NE Hwy. 12; those portions of Cedar and Knox Counties north of NE Hwy. 12; that portion of Keya Paha County east of U.S. Hwy. 183; and all of Boyd County. Both banks of the Niobrara River in Keya Paha and Boyd counties east of U.S. 183 shall be included in Zone 1.

Low Plains Zone 2—Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska border on U.S. Hwy. 75 to U.S. Hwy. 136; east to the intersection of U.S. Hwy. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE Hwy. 2; west to U.S. Hwy. 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to County Road X; south to County Road 21 (Seward County Line); west to NE Hwy. 15; north to County Road 34; west to County Road J; south to NE Hwy. 92; west to U.S. 81; south to NE 66; west to County Road C; north to NE Hwy. 92; west to U.S. Hwy. 30; west to NE Hwy. 14; south to County Road 22 (Hamilton County); west to County Road M; south to County Road 21; west to County Road K; south U.S. Hwy. 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Road (Hall/Hamilton county line); south to Giltner Road; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy. 10; north to County Road ''R'' (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County line); east to County Road #438 (Harlan County line); south to U.S. Hwy. 34; south and west to U.S. Hwy. 136; east to U.S. Hwy. 183; north to NE Hwy. 4; east to NE Hwy. 10; south to U.S. Hwy 136; east to NE Hwy. 14; south to the Kansas-Nebraska border; west to U.S. Hwy. 283; north to NE Hwy. 23; west to NE Hwy. 47; north to U.S. Hwy. 30; east to County Road 13; north to County Road O; east to NE Hwy. 14; north to NE Hwy. 52; west and north to NE Hwy. 91; west to U.S. Hwy. 281; south to NE Hwy. 22; west to NE Hwy. 11; northwest to NE Hwy. 91; west to U.S. Hwy. 183; south to Round Valley Road; west to Sargent River Road; west to Sargent Road; west to Milburn Road; north to Blaine County Line; east to Loup County Line; north to NE Hwy. 91; west to North Loup Spur Road; north to North Loup Road; east to Pleasant Valley/Worth Road; east to Loup County Line; north to Loup-Brown county line; east along northern boundaries of Loup, Garfield and Wheeler counties; south on the Wheeler-Antelope county line to NE Hwy. 70; east to NE Hwy. 14; south to NE Hwy. 39; southeast to NE Hwy. 22; east to U.S. Hwy. 81; southeast to U.S. Hwy. 30; east to U.S. Hwy. 75; north to the Washington County line; east to the Iowa-Nebraska border; south along the Iowa-Nebraska border; to the beginning at U.S. Hwy. 75 and the Kansas-Nebraska border.

Low Plains Zone 3—The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4—The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone—That portion of the State north of I–40 and U.S. 54.

South Zone—The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone—In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone—Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone—That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA

166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone—All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone—The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

Mississippi Valley Population (MVP)-Upper Peninsula Zone—The MVP-Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP-Lower Peninsula Zone—The MVP-Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch County, north continuing along the western border of Branch and Calhoun Counties to the northwest corner of Calhoun County, then east to the southwest corner of Eaton County, then north to the southern border of Ionia County, then east to the southwest corner of Clinton County, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm Counties to the southern border of Isabella county, then east to the southwest corner of Midland County, then north along the west Midland County border to Highway M–20, then easterly to U.S. Highway 10, then easterly to I–75/U.S. 23, then northerly along I–75/U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone—The rest of the State, that area south and east of the boundary described above.

Sandhill Cranes

Mississippi Flyway

Minnesota

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Central Flyway

Colorado—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

Montana—The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

Oklahoma—That portion of the State west of I–35.

South Dakota—That portion of the State west of U.S. 281.

Texas

Zone A—That portion of Texas lying west of a line beginning at the international toll bridge at Laredo, then northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, then north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas-Oklahoma State line.

Zone B—That portion of Texas lying within boundaries beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in the town of Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas-Oklahoma State line, then south along the Texas-Oklahoma State line to the south bank of the Red River, then eastward along the vegetation line on the south bank of the Red River to U.S. Highway 81.

Zone C—The remainder of the State, except for the closed areas.

Closed areas—(A) That portion of the State lying east and north of a line beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with U.S. Highway 290 East in Austin, then east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, then south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, then south on Interstate Highway 45 to State Highway 342, then to the shore of the Gulf of Mexico, and then north and east along the shore of the Gulf of Mexico to the Texas-Louisiana State line.

(B) That portion of the State lying within the boundaries of a line beginning at the Kleberg-Nueces County line and the shore of the Gulf of Mexico, then west along the County line to Park Road 22 in Nueces County, then north and west along Park Road 22 to its

junction with State Highway 358 in Corpus Christi, then west and north along State Highway 358 to its junction with State Highway 286, then north along State Highway 286 to its junction with Interstate Highway 37, then east along Interstate Highway 37 to its junction with U.S. Highway 181, then north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, then north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, then south and east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, then north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, then south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship Channel, then south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and then south and west along the shore of the Gulf of Mexico to the Kleberg-Nueces County line.

Wyoming

Regular Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, and those portions of Johnson County east of Interstates 25 and 90 and Sheridan County east of Interstate 90.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special Season Area—See State regulations.

Utah

Special Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Uinta County Area—That portion of Uinta County described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

BILLING CODE 4310–55–P

FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2011-12 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/ Possession Limit	3 6	6 12	6 12	3 6	6 12	6 12	3 6	6 12	6 12	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.

[FR Doc. 2011–18374 Filed 7–25–11; 8:45 am]

BILLING CODE 4310–55–C

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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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